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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884

No. 1283.

JAMES B. EDMONDS, JOSEPH R. WEST, AND GARRETT J. LYDECKER, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 16, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Original Bill. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS, JOSEPH R. WEST, and GARRETT J. LYDECKER, Commissioners of the District of Columbia.

No. 9262.
Equity Docket 24.

The Baltimore and Potomac Railroad Company brings this its bill against James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, as Commissioners of the District of Columbia, and avers as follows:

First. The complainant is a corporation organized under and in pursuance of an act of the Legislative Assembly of the State of Maryland, approved May 6, 1853, entitled "An act to incorporate the Baltimore and Potomac Railroad Company;" by virtue of an act of Congress, approved February 5, 1867, and an
2 act of Congress supplementary to the last-named act, approved March 13, 1869, and by an act of Congress approved June 21st, 1870, and by virtue of other acts of Congress amendatory of the aforesaid statutes, it was authorized to and did extend, construct, and maintain its said railroad through and in the city of Washington, by way of and on K street, Virginia avenue, and Maryland avenue.

The 12th section of the said act of the Legislative Assembly of Maryland is in the words and figures following, to wit:

"SEC. 12. And be it enacted, That the president & directors of the said company shall be, and they are hereby, invested with all the rights and powers necessary to the construction, working, use, and repair of a railroad from some suitable point in or near the city of Baltimore, and thence within one mile of the town of Upper Marlboro, in Prince George's county, and as near to said town, within the limits of said distance, as may be practicable, and by or
3 near the town of Port Tobacco, in Charles county, to a point on the Potomac river to be selected by the president and directors of said company hereby incorporated, not higher up than Liverpool Point and not lower down than the mouth of St. Mary's river, with such branches at any point of said railroad, not exceeding twenty miles in length, as the said president and directors may determine; the said road, when completed, not to be more than sixty-six feet wide, except at or near its depots or stations, where the width may be made greater, with as many tracks as the president and directors may deem necessary. And the said president and directors may cause to be made, or may contract with others for making, said road, or any part of it; and they, or their agents, or those with whom they may contract, or their agents, may enter upon and use and excavate any lands which may be

wanted for the site of said road or the erection of warehouses or other works necessary for the said road or for its con-
4 struction and repair, and that they may build bridges, fix scales and weights, lay rails, may take and use earth, gravel, stone, timber, or other materials which may be needed for the construction and repair of the said road, or any of its works, and may make and construct all works whatever which may be necessary and expedient in order to the proper completion and maintenance of the said road, and they may make or cause to be made lateral railways in any direction whatever from the said railroad, and for the construction, repair, and maintenance thereof. Shall have all the rights and powers hereby given in order to the construction and repair of said principal railroad, and may also own and employ steamboats or other vessels to connect the said railroad or railroads with other points by water communication, provided nothing herein contained shall be construed to authorize the said company to take private property for their use without compensation, agreed upon by the company and the owners thereof, or awarded by a jury, as hereinafter provided, being first paid or tendered
5 to the party entitled to receive such compensation." The said act of Congress of February 5, 1867, authorizes the complainant, in constructing and maintaining its road in this District, to exercise the same powers, rights, and privileges as it may exercise under and by intent of the said charter or act of incorporation in the extension and construction of any railroad within the State of Maryland, and that it shall be entitled to the same rights, compensation, benefit, and immunities in the use of the said road, and in regard thereto, as are provided in said charter, except the right to construct any lateral road or roads within said District, it being expressly understood that complainant should have power to construct only one lateral road within the said District to some point or terminus within the city and county of Washington, to be determined in the manner thereinafter mentioned.

By virtue of the said authority the complainant constructed its line of railroad along K street southeast, and over Virginia
6 avenue and Maryland avenue to and over the "Long Bridge," with various turnouts and sidings, as authorized by law, and it constructed depots and warehouses for freight and other works at various places in said city, and it now maintains and uses said tracks, sidings, stations, and depots, warehouses, and works, as by law it has a right to do, for the purpose of conducting its business of transporting freight and passengers by cars and locomotive engines propelled by steam.

Second. The complainant, since July, 1872, has been and still is doing business on and over its said railroad for the transportation of freight and passengers from the North to the South, through said city of Washington, and over said "Long Bridge." The traffic and travel has increased, and is increasing, very rapidly, and from time to time the additional facilities for handling freight, storing, and parking cars, and for the accommodation of its passenger business have become necessary, and have been to some extent provided.

On or about the — day of October, 1883, for the purpose
7 of accommodating the increased and increasing business of the complainant it purchased for a large sum of money, to wit, about $23,000.00, the whole of that piece or tract of land in the city of Washington known and described as square numbered two hundred and thirty-three (233), containing over 69,000 square feet of ground, which said square is in the immediate vicinity of said "Long Bridge," in a sparsely inhabited part of said city, and is bounded by Water street, "D," and Fourteenth streets southwest, and said Maryland avenue; and the distance from the said Maryland avenue to the nearest point of said square is about two hundred (200) feet. Said Water street at this locality, although appearing as a public street on the plans of said city, has never been opened or improved, nor has it ever been used as a highway or thoroughfare by the public. There are no dwellings or buildings of any kind on the west of said square, the square being practically on the bank of the Potomac river, and only one building north of and in immediate or close proximity thereto, and said building is not used for
8 the purpose of a dwelling-house, but is and has for a long time been used for a depot for stores belonging to the Quartermaster's Department of the Army of the United States. On the east side of said 14th street and between said "D" street and Maryland avenue there are only about four very small dwelling-houses, and the distance between them and the said square is so great that they cannot be injured, nor can the occupants thereof be annoyed by any use to which the said square may be devoted by the complainant. The said square is one of the most convenient and suitable pieces of ground for the accommodation of the complainant's business and the business interests of the city of Washington which can be found, and its use by the complainant will not only not interfere with the rights of private persons in any perceptible degree, but will be an absolute benefit to private property.

The said square was purchased for and is intended by the complainant to be used as a station for coal, wood, lumber, and
9 other heavy and bulky freight, and it is the intention of the officers of the complainant to improve said property by constructing thereon appropriate appliances, machinery, buildings, and works suitable for shifting and handling freight of that character, and for the accommodation of the business men of the District who deal therein.

A map made by the official surveyor of the District of Columbia, showing the relative location of the said streets and the said square, with the distances, &c., &c., is herewith filed, and marked and designated as "Exhibit A, filed with original bill," to which reference is hereby made as part of this bill.

The complainant also owns the south half of square numbered two hundred and sixty-seven (267), which lies immediately east of said square 233 and on the other side of said 14th street, which said square 267 is now, and for a long time has been, owned by the complainant, and is used by the complainant for a station for
10 stone, marble, and other heavy freight, because of the peculiar

situation of said square 233 in reference to Maryland avenue, and because of the peculiar junction of said avenue at the locality in question with said Water and 14th streets, it is much more feasible and practicable to reach said square 233 with tracks by crossing from said square 267 in a straight line, and will create much less obstruction to public travel than to lay tracks in the form of a curve from Maryland avenue directly to said square 233. But the main line of the complainant's tracks on Maryland avenue may be connected with said square 233 by proper turnouts or sidings without being extended from square 267.

By the fourth section of an act of the Legislative Assembly of the District of Columbia, approved August 23d, 1871, it is provided that the complainant shall give to the municipal authorities of the District of Columbia twenty days' previous notice of its desire and intention of putting down additional tracks in or on any street,
11 and in compliance with such provision the complainant did, on or about the 29th day of November, 1884, give to said defendants such notice of its intention and desire to lay tracks from said square 267 across 14th street to square 233. In addition thereto said defendants were furnished with a map or maps disclosing the plan for making the desired connection with said square 233. Thereupon said defendants notified the complainant that they would forcibly resist any attempt which the complainant might make to lay any tracks across said 14th street, and threatened that for that purpose they would use the Metropolitan Police force of said District. The complainant, because of such threats, and because of the desire of its president and directors and its managing officers to proceed in all things according to law, has made no attempt to lay such tracks.

Third. The use of the said square and the contemplated stations, warehouses, and other works to be erected and used thereon are
12 necessary, proper, and expedient in the working of said railroad and in the proper conduct of its business. Said square was selected and purchased at great expense for the purposes aforesaid, because its location and surrounding advantages made it especially suitable therefor.

In consequence of the great increase of the business of complainant in the city of Washington, and of the great increase in the wants and the supplies of the people, and of the great increase in the commercial business generally of the city of Washington the other stations and warehouses owned or used by the complainant have become and are insufficient both in number and in capacity to furnish the proper facilities for the management and conduct of the said business.

Fourth. To lay tracks across said Fourteenth (14th) street need not obstruct said street beyond the degree of obstruction necessarily caused by the laying of any railroad track or tracks across such a street. The said street is not one of general resort or use for
13 public travel, but is used mostly for the heavy traffic passing over "Long Bridge" to and from the brick yards in Virginia in the vicinity of the south end of said bridge. The complainant intends to, and will, if not interfered with, lay the proposed tracks

over and on said street in the most skillful manner known in the art of laying railroad tracks.

Fifth. The complainant is advised by counsel, and believes and thereupon avers, that it is authorized by its said charter and by the various acts of Congress to enter upon and use any lands which may be wanted for the erection of warehouses and other works necessary and expedient for the proper maintenance of its railroad, to construct stations, warehouses, and works, and to lay and use turnouts connecting the said stations, warehouses and works with its main tracks, and to exercise generally all the rights and powers necessary to the proper working, use, and repair of its railroad in the city of Washington, and that the interference with said
14 powers and the exercise of said privileges by the said defendants is unwarranted and in violation of the said statutes, and of the duties of said defendants as prescribed by law.

To the end, therefore, that the said defendants, their subordinates, officers and agents, and each of them, may be restrained from interfering, directly or indirectly, with the complainant in its work of laying said turnouts, track or tracks, to connect its main line of railroad on Maryland avenue with said square 233 the complainant prays as follows:

Prayers.

1. That the writ of subpœna may issue in the usual form directed to the said defendants, James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, and each of them, requiring them, and each of them, to answer upon their respective corporal oaths the exigencies of this bill.

2. That the said defendants, James B. Edmonds, Joseph R.
15 West, and Garrett J. Lydecker, and each of them, their agents, officers, and subordinates, may be restrained and perpetually enjoined from, directly or indirectly, interfering with the complainant, its officers or agents, in its work of putting down or laying any railroad track or tracks, siding or sidings, turnout or turnouts for the purpose of connecting thereby said square two hundred and thirty-three (233), in the city of Washington, with the main line of said complainant's railroad on Maryland avenue in said city, and also from interfering in any way with the use thereof.

3. That if it be deemed necessary for the further information of this court, all necessary surveys, examinations, and reports may be made in respect of said locality, and in that behalf that are necessary orders and references may be made.

4. That the complainant may have such other and general relief as may be necessary and proper, and as the complainant's case may require.

BALT. & POTOMAC R. R. CO.,
By J. K. SHARP.

ENOCH TOTTEN,
Sol'r for Compl't.

16 DISTRICT OF COLUMBIA, }
County of Washington, } *ss*:

I, Joseph K. Sharp, being duly sworn, do depose and say: That I am the master of transportation for said complainant and in charge of its business in the city of Washington. I have read the foregoing bill of complaint and know the contents thereof, and the same are true, as I verily believe.

JOS. R. SHARP.

Subscribed and sworn to before me, this 23d day of December, A. D. 1884.

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS, *Ass't Clerk.*

16½ [Endorsed:] 9262. Eq. dock. 24. In equity, No. 9262. The Baltimore & Potomac Railroad Company *vs.* James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, Comm'rs Dist. Col. Original bill. Enoch Totten, solicitor for compl't.

17 *Affidavit of Frank Hume. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
vs
JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia. } No. ——.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss*:

I, Frank Hume, being first duly sworn, do depose and on my oath say: That I am a merchant in the city of Washington, and am engaged in the wholesale and retail grocery business, conducted at No. 454 Pennsylvania avenue, in the said city. I am now and for a long time have been receiving and shipping large quantities of goods to and from the District of Columbia. I am well acquainted with square No. 233, near the Long Bridge, and its surround-
18 ings, and in my opinion it is peculiarly well adapted for use as a station or warehouse for receiving and shipping coal, lumber, wood, and other heavy freights. The occupation of said square for the purposes above mentioned would not materially interfere with the comfort of any person dwelling in that neighborhood. There are no dwelling-houses either on the north or west side of said square, and but very few on the east side of it, and they are so far distant as to be free from any ordinary noises or other inconveniences which could result from the use of said square for said purposes.

Fourteenth street at this point is not extensively used for public travel, the principal use of said street being for the transportation of bricks and other heavy materials which pass over the Long Bridge from the brick-yards and other places in the State of Virginia. In

my opinion, the use of 14th street at this point would not be materially or perceptibly interfered with by the laying of railroad tracks across the same for the purpose of connecting square 272 with
19 said square No. 233. I know that the occupation of said street for the purposes above mentioned would be a great advantage to the business men of the cities of Washington and Georgetown, not only in the way of convenience, but also in the way of saving great expense, which is now necessarily incurred *incurred* by us on account of the long distance we are required to transport groceries and other like articles for the supply of the people of the District of Columbia. The benefits which would arise from the use of said square for the purposes mentioned would be felt by all classes.

FRANK HUME.

Subscribed and sworn to before me, this 27th day of December, 1884.

L. I. O'NEAL, [SEAL.]
Justice of the Peace, D. C.

19½ [Endorsed:] In equity. No. 9262. The Baltimore & Potomac Railroad Company *vs.* James B. Edmonds *et al.* Affidavit of Frank Hume.

20 *Affidavit of Richard A. Hunt. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
v.
JAMES B. EDMONDS *et al.*, Comm'rs D. C.

DISTRICT OF COLUMBIA, *ss:*

I, Richard A. Hunt, being first duly sworn, depose and on my oath say: That I reside at No. 324 14th street southwest, in the city of Washington, D. C., and the house in which I reside is close to and in the vicinity of square 233, and know the vicinity and surroundings of said square, and I am of the opinion that said square is particularly well adapted for use as station and warehouse for the shipping and receiving of freights. The locality is sparsely inhabited, and in my judgment no inconvenience or damage could re-
21 sult to private persons from the use and occupation of said square for the purpose of a station and warehouse. I further believe that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square 267 to square 233, for the purpose of connecting said square 233 with the main tracks of the B. & P. R. R. Co. on Maryland avenue.

Said 14th street is not very generally used at this point for public travel, the principal use being for the transportation of bricks from the brick-yards on the Virginia side of the Long Bridge.

his
RICHARD A. × HUNT
mark.

Test: RUTLEDGE WILLSON.

Subscribed and sworn to before me, this 30th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] In equity. No. 9262. The B. & P. R. R. Co. *v.* Edmonds *et al.*, Comm'rs D. C. Affidavit of Richard A. Hunt.

22 *Affidavit of John A. Baker. Filed Dec. 30, 1884. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
v.
JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia.

DISTRICT OF COLUMBIA, *ss:*

I, John A. Baber, being first duly sworn, depose and on my oath say: That I am a merchant in the city of Washington, and am engaged in the business of manufacturing and sale of fertilizer and agriculture machinery, conducted at No. 928 La. Av., in said city. I am now and have been for a long —— shipping and receiving large quantities of fertilizers and agricultural machinery into and from the city of Washington. I am well acquainted with square No. 233, near the Long Bridge, and in my opinion it is peculi-
23 arly adapted for use as a station or warehouse for receiving and shipping coal, lumber, wood, and other heavy freights.

The occupation of said square for the purposes above mentioned would not materially interfere with the comfort of any person dwelling in the neighborhood of said square 233. There are no dwelling-houses either on the north or west side of said square, and but very few on the east side of it, and they are so far distant as to be free from any ordinary noises or other inconveniences which could result from the use of said square for said purposes.

Fourteenth street at this point is not extensively used for public travel, the principal use of said street being for the transportation of bricks and other heavy materials which pass over the Long Bridge from the brick-yards and other — in the State of Virginia.

In my opinion the use of 14th street at this point would not be materially or perceptibly interfered with by the laying of railroad tracks across the same for the purpose of connecting square
24 numbered —— with square numbered 233. I know that the occupation of said street for the purposes above mentioned would be a great advantage to the business men of the cities of Washington and Georgetown, not only in the way of convenience, but also in the way of saving great expense, which is now necessarily incurred by us on account of the long distance we are required to transport groceries and other like articles for the supply of the people of the District of Columbia. The benefits which would arise from the use of said square for the purposes mentioned would be felt by all classes.

JOHN A. BAKER.

Subscribed and sworn to before me, this 29th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

24½ [Endorsed:] In equity. No. 9262. Balt. & Potomac R. R. Co. *vs.* District of Columbia. Affidavit of John A. Baker.

25 *Affidavit of Bridget C. Gill. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia. } No. ——.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Bridget C. Gill, being first duly sworn, depose and on my oath say: That I reside at the corner of D & 13½ Sts. southwest, in the city of Washington, D. C., and am the owner of the house in which I reside, the same being of the assessed value of $1,600.00, and the same is in the neighborhood of square No. 233, and I am familiar with the vicinity and surroundings of said square. I am of the opinion that square 235 is particularly well adapted for use
26 as a station and warehouse for the receiving and shipping of freights. The locality is sparsely inhabited, and, in my judgment, no inconvenience could result to private persons from the use and occupation of said square for the purposes of a station and warehouse. I further believe that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square 267 to square 233, for the purpose of connecting square 233 with the main track of the B. & P. R. R. Company on Maryland avenue. Said 14th street at this point is not very generally used for public travel, the principal use of said street being for the transportation of bricks from the brick-yards across the Long Bridge, in the State of Virginia.

BRIDGET C. GILL.

Subscribed and sworn to before me, this 30th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] In equity. No. 9262. The Baltimore and Potomac Railroad Company *vs.* James B. Edmonds *et al.* Affidavit of Bridget C. Gill.

27 *Affidavit of Elizabeth Raba. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
v.
JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia.

DISTRICT OF COLUMBIA, *ss:*

I, Elizabeth Raba, being first duly sworn, depose and on my oath say: That I reside at No. 1325 Maryland avenue, in the city of Washington, D. C., and the same is in neighborhood of square 233, and I am well acquainted with the vicinity and surroundings of square 233. I am of the opinion that the said square is particularly well adapted for use as a station and warehouse for the receiving and shipping of freight. The locality is sparsely inhabited, and, in my judgment, no inconvenience could result to private
28 persons from the use and occupation of said square for the purposes of such station and warehouse.

I further believe that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square No. 267 to square 233, for the purpose of connecting square 233 with the main tracks of the Baltimore and Potomac Railroad Company on Maryland avenue. Said 14th street is not very generally used for public travel at this point, the principal use being for the transportation of bricks from the brick-yards across the Long Bridge, in the State of Virginia.

ELIZABETH RABA.

Subscribed and sworn to before me, this 29th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] Equity. No. 9262. Baltimore & Potomac R. R. Co. *vs.* District of Columbia. Affidavit of Elizabeth Raba.

29 *Affidavit of J. C. Gill. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
v.
JAMES B. EDMONDS *et al.*, Commissioners D. C.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, J. C. Gill, being first duly sworn, depose and on my oath say: That I reside at No. 401 13½ street southwest, in the city of Washington, D. C., and am familiar with the property in the neighborhood of square 233; that said square is on the west side of 14th street southwest, just north of the Long Bridge, and is particularly well adapted for use as a station and warehouse for the shipping and receiving of heavy freights.

The locality is sparsely inhabited, and, in my opinion, no inconvenience could result to private persons from the use and
30 occupation of said square for the purposes of such station and warehouse.

I further believe that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square 267 to square 233, for the purpose of connecting said square 233 with the main track of the Baltimore and Potomac Railroad Company on Maryland avenue.

Said 14th street is not very generally used for public travel at this point, the principal use being for the transportation of bricks from the brick-yards in the State of Virginia across the Long Bridge.

J. C. GILL.

Subscribed and sworn to before me, this 29th day of December, 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] R. Equity. No. 9262. Baltimore & Potomac R. R. Co. *vs.* District of Columbia. Affidavit of J. C. Gill.

31 *Affidavit of Kate Bresnaham. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE B. & P. R. R. Co. *v.* THE COMMISSIONERS OF THE D. C.

DISTRICT OF COLUMBIA, *ss:*

I, Kate Bresnaham, being first duly sworn, depose and on my oath say: That I reside at No. 1375 D street southwest, in the city of Washington, D. C., and am well acquainted with the vicinity and surroundings of square 233. I am of the opinion that said square is particularly well adapted for use as a station and warehouse for the receiving and shipping of heavy freight. The locality is sparsely inhabited, and in my judgment no inconvenience could result to private persons from the use and occupation of said square for the purpose of such station and warehouse. I further believe
32 that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square 267 to square 233, for the purpose of connecting square 233 with the main tracks of the B. & P. R. R. Co. on Maryland avenue. Said 14th street is not generally used for public travel at this point, the principal use being for the transportation of bricks from the brick-yards on the south side of the Long Bridge.

KATIE BRESNAHAM.

Subscribed and sworn to before me, this 29th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] Equity. No. 9262. Balto. & Potomac R. R. Co. *vs.* District of Columbia. Affidavit of Kate Bresnaham.

33 *Affidavit of William Joy. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
v.
JAMES B. EDMONDS *et al.*, Commissioners D. of C.

DISTRICT OF COLUMBIA, *ss:*

I, William Joy, being first duly sworn, depose and on my oath say: That I reside at the corner of 14th & D street- S. W., in the city of Washington, D. C., and am well acquainted with the vicinity and surroundings of square 233. I am of the opinion that the said square is particularly well adapted for use as a station and warehouse for the receiving and shipping of freight. The locality is sparsely inhabited, and in my judgment no inconvenience could result to private persons from the use and occupation of said
34 square for the purposes of such station and warehouse. I further believe that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square 267 to square 233, for the purpose of connecting square 233 with the main track of the Baltimore and Potomac Railroad Company on Maryland avenue.

Said 14th street is not very generally used for public travel at this point, the principal use being for the transportation of bricks from the brick-yards in the State of Virginia and across the Long Bridge.

WILLIAM JOY.

Subscribed and sworn to before me, this 29th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] Equity. No. 9262. Baltimore & Potomac R. R. Co. *vs.* District of Columbia. Affidavit of William Joy.

35 *Affidavit of Geo. W. Cumberland. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia. } No. ——.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

I, George W. Cumberland, being first duly sworn, do depose and on my oath say: That I reside in the vicinity of square No. 233, and that I know said square and the surroundings thereof.

I reside at No. 306 Thirteenth-and-a-half street, in the city of

Washington. I am of opinion that the said square is particularly well adapted for use as a station and warehouse for the receiving and shipping of heavy freights. The locality there is sparsely
36 inhabited, and, in my judgment, no inconvenience could result to private persons from the use and occupation of said square for the purposes of such station and warehouse.

I further believe that the travel of 14th street would not be materially interfered with or interrupted by the laying of tracks from square No. 267 to square No. 233, for the purpose of connecting square 233 with the main tracks of the Baltimore and Potomac Railroad Company on Maryland avenue. Said 14th street is not very generally used for public travel at this point, the principal use being for the transportation of bricks from the brick-yards in the State of Virginia across the Long Bridge.

his
GEORGE W. × CUMBERLAND.
mark.

Test: RUTLEDGE WILLSON.

Subscribed and sworn to before me, this 29th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] In Equity. No. 9262. The Baltimore and Potomac Railroad Company *vs.* James B. Edmonds *et al.* Affidavit of Geo. W. Cumberland.

37 *Affidavit of John J. Daly. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE B. & P. R. R. Co.
v.
JAMES B. EDMONDS *et al.*, Commissioners D. C.

DISTRICT OF COLUMBIA, *ss:*

I, John J. Daly, being first duly sworn, depose and on my oath say: That I reside at No. 1367 C street southwest, in the city of Washington, D. C., and am the owner of the house in which I reside, the same being of the assessed value of $7,000.00, and the same is in the neighborhood of square 233, and I am well acquainted with the vicinity and surroundings of said square. I am of the opinion that square 233 is particularly well adapted for use as a station and warehouse for the receiving and shipping of freights. The locality is sparsely inhabited, and in my judgment no inconvenience could result to private persons from the use and occupation of said
38 square for the purposes of a station and warehouse. I further believe that the travel on 14th street would not be materially interfered with or interrupted by the laying of tracks from square 267 to square 233, for the purpose of connecting square 233 with the main track of the B. & P. R. R. Company on Maryland avenue.

Said 14th street at this point is not very generally used for public travel, the principal use being for the transportation of bricks from the brick-yards across the Long Bridge from Virginia.

JOHN J. DALY.

Subscribed and sworn to before me, this 30th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[Endorsed:] Equity. No. 9262. The B. & P. R. R. Co. *v.* Edmonds *et al.*, Commissioners D. C. Affidavit of John J. Daly.

39 *Affidavit of Rob't T. Hieston. Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia. } No. ——.

DISTRICT OF COLUMBIA, *County of Washington*, } *ss:*

I, Robert T. Hieston, being first duly sworn, depose and on my oath say: That I am a merchant in the city of Washington, and am engaged in the wholesale coal business in said city. I am well acquainted with square No. 233, near the Long Bridge, and its surroundings, and in my opinion it is peculiarly well adapted for use as a station or warehouse for receiving and shipping coal, lumber, wood, and other heavy freights; that the occupation of said
40 square for that purpose would not in any way interfere with the comfort of any person in that neighborhood.

There are no dwelling-houses on either the west or north side of said square and but very few on the east side of it, and they are so far distant as to be free from any ordinary noises or other inconveniences which could result from the use of said square for said purposes.

Fourteenth street at this locality is not extensively used for public travel, the principal use being the transportation of bricks and other heavy materials, which pass over the Long Bridge from the brick-yards and other places in the State of Virginia; and in my opinion the use of 14th street at this point would not be materially impaired by the laying of railroad tracks across the same for the purpose of connecting square No. 267 with the said square No. 233. I know that the occupation of said street for the purposes above mentioned would be a great advantage to the business men of the cities of Washington and Georgetown, not only in the way of saving expense which is now necessarily incurred by us by reason of
41 the long distance we are required to transport goods, but also in the general convenience of the business community. The

benefits which would arise from the use of said square for the purposes mentioned would be felt by all classes.

ROBERT T. HIESTON.

Subscribed and sworn to before me, this 30th day of December, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

41½ [Endorsed:] In equity. No. 9262. The Baltimore and Potomac Railroad Company *vs.* James B. Edmonds *et al.* Affidavit of Rob't T. Hieston.

42 *Filed Dec.* 30, 1884. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS *et al.*, Commissioners, &c.

I, Arthur W. Ferguson, being duly sworn, do depose and say, that the papers hereto attached, being as follows:

First. A petition signed by residents of West Washington or Georgetown;

Second. A petition signed by residents of the city of Washington and business men; and

Third. A petition signed by a committee appointed by the Lumber Exchange, each of which petitions relate to the use of square two hundred and thirty-three (233) by the Baltimore and Railroad Company for a freight yard, are correct copies of the originals thereof now on file amongst the records of the District of Columbia. Said copies were made by me in person with the permission of the Commissioners on the 23d day of December, 1884.

ARTHUR W. FERGUSON.

Subscribed and sworn to before me, this 27th day of December, 1884.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

43 Copy.

Petition of Lumber Exchange.

HONORABLE COMMISSIONERS DISTRICT OF COLUMBIA:

GENTLEMEN: The undersigned, a committee appointed by the Lumber Exchange, representing the lumber interests in the District of Columbia, to wait upon your honorable board with a view to securing your approval of such necessary measures as the Baltimore & Potomac R. R. Company desire to afford for the proper transaction of our very large and growing business over said road, respectfully represent that we receive and deliver large quantities of lumber by the said B. & P. R. R.; that by reason of the long distance

from the business or central part of the city of the depot of said company at New Jersey avenue, together with the almost impassable condition of the streets approaching thereto, especially in wet weather, it is therefore impossible to do business with said road unless greater and less expensive facilities are afforded us.

Furthermore, we have been informed that the B. & P. R. R.
44 Co. have lately purchased square No. 233, near the Long Bridge, and are only awaiting the action of the Commissioners granting them permission to enter into said square to afford us all the facilities we need.

On behalf of the Lumber Exchange we, therefore, respectfully petition and request your honorable board to grant to the said Baltimore & Potomac R. R. Co. permission to enter said square No. 233 with their tracks, and thereby give us accommodation for the proper conduct of a business that is a not inconsiderable faction in the commercial interests of the District.

Moreover, we do not believe that any public or private interest will be infringed or rights abridged by the tracks proposed, but, on the contrary, believe it will result in the material enhancement of the value of the property adjacent or contiguous thereto.

(Signed) E. E. JACKSON & CO.
JOHNSON & WIMSATT.
WHEATLEY BROTHERS.

45 Copy.

Petition of Residents of Georgetown.

To the COMMISSIONERS OF THE DISTRICT OF COLUMBIA:

The undersigned, residents of West Washington, or Georgetown, engaged in business therein, respectfully pray that the Commissioners of the District of Columbia grant permission to the Baltimore & Potomac Railroad Company to lay tracks across 14th street, between square 267 and 233, near Long Bridge, to enable said company to use said square 233 for the purpose of receiving and delivering freight.

The transaction of our ordinary business with said company is very much embarrassed, and is growing more & more expensive, because of the want of sufficient room. The use of the said square for such purposes will greatly aid and accommodate the commercial business of this city and District.

Names.	Names.
Thos. Knowles.	Brown & Lewis.
D. F. Robinson.	M. J. Adler.
M. A. McGowan.	W. H. Tenney.
F. L. Moore.	H. Hurt.
Sam'l Cropley & Son.	R. B. & H. B. Cropley.
G. T. Dunlop.	Herr & Cissell.
46 Buckey Marbury.	G. W. Cropley.
J. G. & J. M. Waters.	Beall & Shoemaker.
Joseph H. Lee.	Joseph F. Birch.

Names.	Names.
E. D. Hartley.	David Jackson.
John Leetch.	V. Goddard.
John E. Cox.	Wm. Russell Brace.
Borden Mining Co.	Joseph & J. E. Libbey.
John P. Agnew & Co.	Beaklam & Middleton.
Horace Jarboe.	Geo. W. Decker.
J. H. Schultze.	B. F. Waddey.
Wm. King & Son.	Veall & Leigh.
Wheatley Bros.	Cropley, Boteler & Crampton.
J. H. Smoot.	G. W. Offutt & Bro.
Craig & Jackson.	Samuel C. Palmer.
M. C. Mitchell.	Mayfield & Heiston.
J. D. B. Peters.	Cartury & Johnston.
Sinsheimer & Bro.	J. T. Probey.
M. O'Donoghue.	Jas. T. Clements.
H. G. Wagner.	C. H. Dumar.
A. Hanlon.	C. H. Fickling.
James V. Yates.	Beavans & Shaw.
Jas. K. Proby.	H. P. Gilbert.

47 Copy.

Petition of Business Men.

To the Commissioners of the District of Columbia:

The undersigned, residents of the city of Washington, engaged in business therein, respectfully pray that the Commissioners of the District of Columbia grant permission to the Baltimore & Potomac Railroad Company to lay tracks across 14th street between square 267 and 233, near Long Bridge, to enable said company to use said square 233 for the purpose of receiving and delivering freight.

The transaction of our ordinary business with said company is very much embarrassed, and is growing more & more expensive, because of the want of sufficient room. The use of the said square for such purposes will greatly aid and accommodate the commercial business of this city & District.

Names.	Names.
H. V. Bisco.	Clarke & Given.
Jas. E. Miller.	Kelley & Chamberlin.
Great Falls Ice Co.	C. A. Schneider's & Sons.
James O. Carter.	Thos. Somerville & Sons.
C. H. Burgess.	Geo. A. Shehan.
Wm. McLean & Son.	John Miller.
48 F. H. Finley.	Maury Dove.
F. K. Ward.	Frank Hume.
John S. Miller.	J. F. Saum.
Jett & Baker.	A. G. Johnson & Bro.
Sam. Emery.	Frank G. Rundlett.
Geo. Bogus.	Barber & Hamilton.
Philip Polland.	Johnson Brothers.

49 In the Supreme Court of the District of Columbia. December 30, 1884.

THE BALTIMORE AND POTOMAC RAILROAD CO., Complainant, *against* JAMES B. EDMONDS *et al.*, Commissioners, &c., Defendant. } No. 9262. Equity Docket 24.

The President of the United States to James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, Commissioners of the District of Columbia, Defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS, *Ass't Clerk.*

[Endorsed:] No. 9262. Equity docket 24. Spa. to ans. original bill. The Balt. & Potomac R. R. Co. *vs.* Jas. B. Edmonds *et al.*, Com'rs. Issued Dec. 30, 1884. Returned Jan'y 8, 1885. Served James B. Edmonds, president of the Board of Commissioners of the District of Columbia, January 3d, 1885. Clayton McMichael, marshal. Totten.

50 *Notice of Motion. Filed Dec.* 31, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY *vs.* JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia. } No. 9262.

Please take notice that on Thursday, the 8th day of January, 1885, at the opening of court on that day, or as soon thereafter as counsel can be heard, I shall move the court that the defendants be enjoined and restrained as in and by said bill prayed.

ENOCH TOTTEN,
Counsel for Compl't.

To A. G. RIDDLE, Esq.,
Of Counsel for Defendants.

Dec'r 31st, 1884.

Service acknowledged by receipt of copy.

A. G. RIDDLE,
Att'y for Def'ts.

51 *Demurrer of Defendants. Filed Jan.* 8, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS *et al.*
No. 9262.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, do demur thereto, and for cause of demurrer show: That the said complainant hath not in and by its said bill stated such a case as doth or ought to entitle it to any such relief as is thereby prayed for or against these defendants.

Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this court, whether they shall be compelled to make any further or other answer to the said bill of complaint, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in
52 this behalf sustained.

A. G. RIDDLE,
Att'y for Defendants.

I, Joseph R. West, Commissioner of the District of Columbia, and one of the above-named defendants, do solemnly swear that the above demurrer is not interposed for delay.

J. R. WEST.

Subscribed and sworn to before me, this the 7th day of January, 1885.

WILLIAM TINDALL,
Notary Public.

I certify that, in my opinion, the above demurrer is well founded in point of law.

A. G. RIDDLE,
Att'y for Def'ts.

53 *Order Dismissing Bill with Costs & Appeal by Compl't. Filed Jan.* 12, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. Eq.

THE BALTIMORE & POTOMAC RAILROAD COMPANY
vs.
THE DISTRICT OF COLUMBIA.
No. 9262.

This cause coming on to be heard on the bill of complaint filed herein, and the demurrer of the defendant thereto, & the case being set for final hearing, after argument of counsel and due consideration thereof, it is, this 12th day of January, 1885, ordered, adjudged, and decreed that the said bill of complaint be, and the same is hereby, dismissed with costs, and from this decree the complainant appeals to the general term.

W. S. COX, *J.*

54 *Motion to Advance.* 5 *Min. Gen. Term*, 160. *Filed Jan.* 29, 1885. *R. J. Meigs, Clerk.*

Supreme Court District of Columbia. General Term, Jan'y, 1885. Eq.

BALTIMORE AND POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS *et al.*, Comm'rs Dis. of Columbia.

And comes the said complainants and moves the court to advance the above cause and fix an early day for the hearing thereof, and for reasons says, that it is for the public interests that said cause shall be heard at an early day.

ENOCH TOTTEN,
Counsel for Compl't.

54½ *Notice.*

In the Supreme Court of the United States. Oct. Term, 1885.

J. B. EDMONDS *et al.*, Appellants,
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Appellee. } No. ——.

SIR: Take notice that I have this day filed in the clerk's office of said court the record and perfected the appeal in this case.

I have also filed in said cause a motion to dissolve the injunction decreed by the court below against the appellants, which said motion I shall call up for hearing in said court on Monday, the 23d instant.

A. G. RIDDLE,
Attorney for Appellants.

To ENOCH TOTTEN, Esq., *Att'y for the Appellee.*

Service had by leaving copy at office of att'y for appellee, M'ch 16, '85.

[Endorsed:] Supreme C't U. S. Oct. Term, 1885. James B. Edmonds *et al.*, Commissioners of the Dist. of Col., *vs.* The Baltimore and Potomac R. R. Co. Notice.

55 *Motion for Leave to Ans. Filed Mar.* 10, 1885. *R. J. Meigs, Clerk.*

Supreme Court District of Columbia. Jan'y Term, 1885.

THE BALTIMORE AND POTOMAC RAILROAD CO.
vs.
J. B. EDMONDS *et al.*, Com'rs Dist. of Col.

And now come the Commissioners, defendants, and move the court for leave to file the answer hereto appended and made part of this motion, with the plat thereto appended, as their answer in this case.

A. G. RIDDLE,
Att'y for the Dist. of Col.

56 *Answer. Riddle for District. Filed Mar.* 10, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE BALTIMORE & POTOMAC RAILROAD COMPANY
vs.
JAMES B. EDMONDS, JOSEPH R. WEST, and GARRETT J. LYDECKER, Commissioners of the District of Columbia. } Eq. No. 9262.

For answer to the bill of complaint of the said Baltimore & Potomac Railroad Company the Commissioners of the District of Columbia come and respectfully show as follows:

First. They admit that the matters and things contained in paragraph first are substantially true as therein set forth. They allege, however, that inasmuch as Congress has in express terms specified the routes by which alone the complainant could enter the city of Washington, and has defined by act its right and privileges in said city, that these acts are the sole source of its rights in the premises. Said complainant is expressly prohibited from occupying any part of any lot or square owned by the United States, and as the
57 Commissioners are informed, believe, and aver said company has no right to lay its tracks upon or across any street of said city which does not coincide with or lay across its thus prescribed route.

Second. In answer to paragraph second the defendants say they know nothing of the purchase of square numbered two hundred and thirty-three (233) by complainant, except what it asserts. That its location and present condition are set out in the main correctly. That these defendants have had an accurate plat, with measurements made, hereto appended as part of this answer (and marked Defendants' Exhibit D. C. No. 1), of the ground at the northern end of Long Bridge, the point made important by said bill, where Water, South E, Fourteenth streets, and Maryland avenue unite. Said square numbered two hundred and thirty-three (233) does not abut on any street or avenue of the city along and over which the company is authorized to lay its track. That in order to reach it will require not merely a siding track, but a lateral track & road through square 267, constructed for the sole purpose of reaching it.

58 That the streets, E south and Fourteenth west, as also Maryland avenue, terminate on Water street. That the title to the soil underlying all of said streets, as they are advised and believe, is in the United States, as is the title to all land southerly of Water street along the Potomac river, also in the United States. That the proposed passage to square No. 233, as set forth in said bill, is from square 267 across Fourteenth street directly.

That the possible other route suggested by said bill, from the complainant's main track to square 233, would be necessarily over portions of Water, E, and Fourteenth streets, as also Maryland avenue.

[That said Fourteenth street is a direct and a principal thoroughfare, permitting access to and from the city, over a free bridge, by people from the southerly side of the Potomac river, and to permit the plaintiff to cross the same, with the number of tracks it claims the right to lay, to a warehouse and depot, would be a constant hindrance, more or less, to the people whose business requires them to cross the Long Bridge.]

This may be added to the defendants' answer. E. T.

It is true the complainant served notice of its intention to cross said Fourteenth street from square 267 to square 233, as set
59 forth in said second paragraph, the sole proposed route set forth in said bill to said square 233.

The defendants further show that by sections 222, 224, 226, and 229 of the Revised Statutes of the United States, relating to the District of Columbia, all open spaces, public reservations, public grounds, streets, and avenues of the city are specially protected from every species of use, occupation, and obstruction by private persons & corporations.

That by the acts of Congress of February 21, 1871, June 20, 1874, and June 11, 1878, these defendants, Commissioners of the District of Columbia, are charged with the power and duty of the enforcement of said sections, as also generally to keep said streets and avenues in good repair and free from obstruction.

That they informed themselves, and were advised and believe that said complainant is without right to lay a track from said square No. 267 across said Fourteenth street to and upon square 233, and that it was their duty to prevent said laying of proposed track across said street, and therefore they directed the police, under their orders, to prevent said obstruction of said street by a quiet show of the necessary force for that purpose.

60 They disclaim all intention, purpose, or wish to in any way obstruct or interfere with the business or interest of the complainant in the premises; they intend only in a quiet, proper way to do their duty in the premises, as this court may direct.

Third. In answer to the third paragraph of said bill they do not undertake to say what may be necessary or expedient for the interests of the complainant, but they respectfully suggest that no business necessity can or will warrant the subjection of the rights and interests of the city and its citizens to the needs of the company in such a way and to such an extent as will interfere with the proper growth of the city and render the property of individuals comparatively valueless.

Fourth. To the fourth paragraph of said bill they say, as it appears to them, it is not a question of crossing said Fourteenth street with a minimum of inconvenience, but, as they believe, it is one of right and power on the part of the complainant which, as they have hereinbefore stated, they do not believe exists.

Fifth. In answer to the fifth paragraph of said bill these
61 defendants believe, and therefore admit, that the complainant may construct the necessary stations, depots, warehouses,

&c., along the line of its track, laid where it is authorized to place it, but they deny that without express grant it can lay its track along or across a street, not necessary to be crossed or passed along, to go from one named and authorized point to another, nor construct any lateral road to points in the District not specified in the charter.

And now having fully answered, these defendants pray to be hence dismissed with their reasonable costs in this behalf sustained.

J. B. EDMONDS,
—— ——,
—— ——,
Commissioners Dist. of Col.

A. G. RIDDLE, *Of Counsel.*

We, James B. Edmonds, —— ——, and —— ——, Commissioners of the District of Columbia, being first duly sworn, depose and say: That we have read over the above answer by us subscribed
62 and know the contents thereof; that the facts therein stated of our own knowledge are true, and those stated on information and belief we believe to be true.

J. B. EDMONDS.
—— ——.
—— ——.

Subscribed and sworn to before me, this 7th day of March, 1885.
[SEAL.] WILLIAM TINDALL,
Notary Public.

(Here follows diagram, marked p. 63.)

64 (Copy of Decree.)

Final Decree of General Term.

In the Supreme Court of the District of Columbia. In Equity.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Complainant,
vs.
JAMES B. EDMONDS, JOSEPH R. WEST, and GARRETT J. LYDECKER, Commissioners District of Columbia, Defendants. } No. 9262.

This cause came on to be heard on the appeal of the complainant from the decree of the special term, and counsel were heard, and upon consideration thereof, the court being of the opinion that the complainant, The Baltimore and Potomac Railroad Company, by virtue of the powers and privileges to it specially granted by the statutes of the United States in the premises, is fully authorized and empowered to occupy and use the square in the city of Washington, known and distinguished on the plan of said city as square numbered two hundred and thirty-three (233), for the purposes of its business, and that it is fully authorized and empowered to enter the same by crossing Fourteenth street (14th) with its railroad tracks from the south part of square numbered two hundred and sixty-

seven (267), and the said defendants, after the announcement by the court of its decision, having moved the court for leave to file an answer to said bill (with a map or diagram) *nunc pro tunc*, it is thereupon this 10th day of March, 1885, by the said general term ordered, adjudged, and decreed that the said defendants be, and they are hereby, granted leave to file said answer (and exhibit) *nunc*
65 *pro tunc;* and thereupon the cause proceeded at once to hearing on the pleadings as thus made up.

And thereupon it is further ordered, adjudged, and decreed that the decree of the special term be, and the same hereby is, reversed, and that the said defendants, James B. Edmonds, Joseph R. West, and Garrett J. Lydecker be, and they hereby are, and each of them is, restrained and perpetually enjoined from, directly or indirectly, or in any manner whatever interfering with, or disturbing, or interrupting the said Baltimore and Potomac Railroad Company, its officers, agents, workmen, or laborers, or any of them, in the work of putting down railroad tracks on, over, and across Fourteenth (14th) street to connect, and connecting, said square numbered two hundred and sixty-seven (267) with the said square two hundred and thirty-three (233) in said city, and from in any way, directly or indirectly, interfering with, or disturbing, or interrupting the occupation, use, or repair by said complainant of said railroad tracks; and said defendants, James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, are also further perpetually enjoined and restrained from ordering, directing, or permitting any officer or employee of the District of Columbia, or any officer or member of the Metropolitan Police force, directly or indirectly, to interfere with the said complainant in its construction, use, occupation, or repair of the said railroad tracks.

It is further ordered, adjudged, and decreed that the complainant recover of and from said defendants the costs of this suit to be taxed by the clerk, and that execution issue against said defendants, as at law.

And from this decree the defendants pray an appeal to the Supreme Court of the United States, which is allowed.

By the court: D. K. CARTTER,
Chief Justice.

66 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that t writings annexed to this certificate are true copies of originals c file and of record in said office, and that said originals, togethe constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 16th day o March, 1885.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk.*

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 16th day of March, 1885.

[SEAL.] D. K. CARTTER,
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 16th day of March, 1885.

[SEAL.] R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Assistant Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1283. James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, Commissioners of the District of Columbia, appellants, *vs.* The Baltimore & Potomac Railroad Company. Filed March 16, 1885.

11-V-452

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

JAMES B. EDMONDS *et al.*, Commissioners of the District of Columbia, Appellants,

vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Appellee.

On Appeal from the Supreme Court of the District of Columbia.

Motion to Dissolve Injunction.

And now comes the appellants and move the Court to dissolve the injunction issued against them and made perpetual in its final decree by the court below, and for ground for said action by this Court they here show that said cause is within the provision of the act of Congress, affirmed March 3d, 1885, authorizing them to appeal said case into this Court.

That said Railroad Company, appellee, is about to, and will within the shortest convenient time from this day, lay down and construct its said track from square 267 to square 233, across said Fourteenth street, the sole street of the city of Washington that leads directly over and along the Long Bridge across the Potomac river, the sole free bridge across the same, which said street does not lie across the route of the track of said railroad as prescribed by any act of Congress authorizing the appellee to enter, pass through, and leave said city. That thus to cross said street with its proper tracks would be great and irreparable damage to said city, and the great hindrance and inconvenience of the numerous persons who enter and leave said city along and over said street.

That said injunction restrains and prevents the Commissioners, appellants, from the just and necessary exercise of the authority with which they are invested by several acts of Congress to keep said street free from obstruction and in a good and safe condition for travel at all times.

That said Railroad Company, appellee, as it shows by its said bill, proposes to erect a large warehouse and depot on said square 233, and claims the right to construct to it as many tracks as in the discretion of its directors may be deemed proper, and that long before this case can be reached for trial in the due course of business of this Court the whole injury to said city by the proposed crossing of said street will be accomplished.

A. G. RIDDLE,
Att'y Dist. Col.

A. G. Riddle, being sworn, says he is the attorney of said District of Columbia and attorney for the Commissioners, appellants; that

the matters and statement of facts above set forth are true; that the matters and conclusions of law are, as he is informed, advised, and believes, stated with substantial accuracy.

A. G. RIDDLE.

Subscribed and sworn to before me, this the 19th day of March, 1885.

[SEAL.] CHAS. B. BEALL,
Notary Public.

Endorsed on cover: Sup. Court U. S. 1884, Oct. term. No. 1283. Edmonds *et al.*, Comm'rs of District of Columbia, app'ts, *v.* Baltimore & Potomac R. R. Co. Motion to dissolve injunction. Office Supreme Court U. S. Filed Mar. 16, 1885. James H. McKenney, clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

J. B. EDMONDS *et als.*
vs.
THE BALTIMORE & POTOMAC RAILROAD CO. } No. 1283.

Matter Supplemental to the Motion filed in said Cause March 16, 1885.

And now come the appellants, and further show to the Court that since filing their said motion and serving notice of the same on the defendant corporation, the appellee has, with a large force, entered upon said Fourteenth street, and is now laying its said tracks across the same; that it will complete and maintain the same until said injunction is dissolved, as will appear by the affidavits hereto appended as part of this showing.

March 20th, 1885.

A. G. RIDDLE,
Att'y for Appellants.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

William Temple, being duly sworn, deposes and says: That he is a member of the Metropolitan Police Force of the District of Columbia; that by direction of his superior officers he proceeded to Fourteenth street west, between D and Maryland avenue south, where he ascertained that the Baltimore and Potomac Railroad Company, about seven (7) o'clock a. m. of March 19th, 1885, commenced to lay a track from an open lot on square 267, on the east side of Fourteenth street west, between said D street and Maryland avenue south, and are constructing it from said square across said Fourteenth street to square 233; that at 3.15 p. m. of said day the said Temple went to said point on said Fourteenth street and saw that the said track had been laid about three-quarters of the way across said street and in the direction of said square 233; that, as this affiant is informed and believes, the said track will be constructed and completed by the time the men are discharged from further work on said day; that at present the said Company has a force of about twenty (20) men engaged in laying said track, and, as this affiant has been informed by the men employed by said Company, and believes the said Company intend on to-morrow (Friday, March 20th, 1885), to place a larger force of men at work in laying an additional track

from said square 267, across Fourteenth street west, to said square 233, in order to complete the same on said day.

WM. TEMPLE.

Subscribed and sworn to before me, this the 19th day of March, 1885.

EDWIN FORREST,
U. S. Commissioner.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

John Loane, being duly sworn, deposes and says: That he is a member of the Metropolitan Police Force of the District of Columbia; that he was with William Temple, whose affidavit is hereto annexed, at the time the said Temple went to said Fourteenth west, between D street and Maryland avenue south, as declared in his said affidavit; that he has heard read the affidavit of said Temple, and says that the matters and things therein stated are, to the best of his knowledge and belief, true, in point of fact.

JOHN LOANE.

Subscribed and sworn to before me, this 19th day of March, 1885.

EDWIN FORREST,
U. S. Commissioner.

114-455

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1884.

NO. 1283.

JAMES B. EDMONDS, et al,
Commissioners of the District of Columbia,
Appellants,

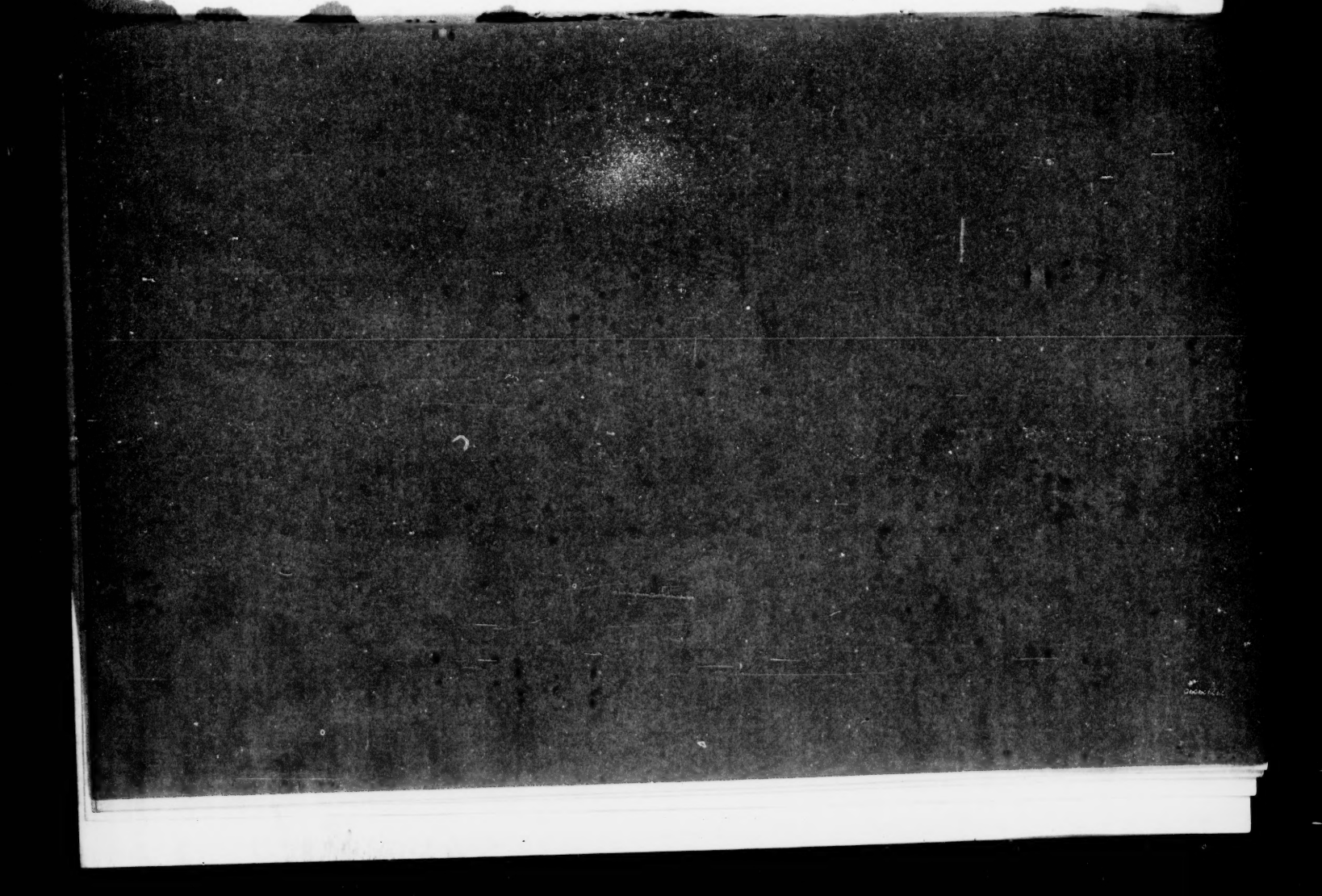
vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Opinions of the Supreme Court of the District of Columbia, and Maps.

WASHINGTON, D. C.:
R. O. POLKINHORN & SON, PRINTRS.
1885.



In the Supreme Court of the District of Columbia

GENERAL TERM—March 10, 1885.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, *Complainant*, *vs.* JAMES B. EDMONDS *et al.* Commissioners of the District of Columbia, *Defendants*.	Equity, No. 9262.

Report and Decision of the Case.

The complainant, on the 30th day of December, 1884, exhibited its bill in this court, praying an injunction to restrain the defendants, who are Commissioners of the District of Columbia, from interfering with its work of laying tracks from its main line of railroad to the square of ground owned by it, known as square number 233, adjoining its line of road.

The allegations of the bill are substantially as follows:

That section twelve of the act of the Legislature of Maryland, the charter, which was re-enacted by the act of Congress of February 5, 1867, is as follows:

> "That the president and directors of the said company shall be, and they are hereby invested with all the

rights and powers necessary to the construction, working, use, and repair of a railroad from some suitable point in or near the city of Baltimore, and thence within one mile of the town of Upper Marlboro in Prince George's county, and as near to said town, within the limits of said distance, as may be practicable, and by or near the town of Port Tobacco in Charles county, to a point on the Potomac river, to be selected by the president and directors of said company hereby incorporated, not higher up than Liverpool Point, and not lower down than the mouth of St. Mary's river, with such branches at any point of said railroad, not exceeding twenty miles in length, as the said president and directors may determine. The said road, when completed, not to be more than sixty-six feet wide, except at or near its depots or stations where the width may be made greater, with as many tracks as the president and directors may deem necessary; and the said president and directors may cause to be made, or may contract with others, for making said road or any part of it; and they or their agents, or those with whom they may contract, or their agents, may enter upon and use and excavate any lands which may be wanted for the site of said road or the erection of wacehouses or other works necessary for the said road or for its construction and repair, and that they may build bridges, fix scales and weights, lay rails, may take and use earth, gravel, stone, timber, or other materials which may be needed for the construction and repair of the said road or any of its works, and may make and construct all works whether which may be necessary and expedient in order to the proper completion and manitenance of the said road; and they may make or cause to be made lateral railways in any direction whatever from the said railroad, and for the construction, repair and maintenance thereof shall have all the rights, and powers hereby given in order to the construction and repair of said principal railroad, and may also own and employ steamboats or other vessels to connect the said railroad or railroads with other points by water communication, provided nothing herein contained shall be construed to authorize the said company to take private property for their use without compensation agreed upon by the company and the

owners thereof, or awarded by a jury as hereinafter provided, being first paid or tendered to the party entitled to receive such compensation."

That the said act of Congress of February 5, 1867, authorizes the complainant, in constructing and maintaining its road in this District, to exercise the same powers, rights, and privileges as it may exercise under and by intent of the said charter or act of incorporation, in the extension and construction of any railroad within the State of Maryland, and that it shall be entitled to the same rights, compensation, benefits, and immunities in the use of the said road, and in regard thereto as are provided in said charter, except the right to construct any lateral road or roads within said District, it being expressly understood that complainant shall have power to construct only one lateral road within the said District to some point or terminus within the city and county of Washington, to be determined in the manner thereinafter mentioned.

That by virtue of the said authority, the complainant constructed its line of railroad along K street, southeast, and over Virginia avenue and Maryland avenue to and over the "Long Bridge," with various turn outs and sidings as authorized by law, and it constructed depots and warehouses for freight and other works at various places in said city, and it now maintains and uses said tracks, sidings, stations and depots, warehouses and works, as by law it has a right to do, for the purpose of conducting its business of transporting freight and passengers by cars and locomotive engines propelled by steam.

That in consequence of the vast increase in the business of the complainant, and the inadequacy of its warehouse and track accommodations for such business, it purchased the square of ground before mentioned for about the sum of $23,000.00. This square contains nearly one and a half

acres of ground, and is especially adapted to and appropriate for the uses and necessities of the company in the proper conduct of its business. It is located in a sparsely inhabited part of the city, and will not incommode private persons; the proposed tracks leading to it will not obstruct the use of the streets to any greater extent than the presence of railroad tracks, skilfully laid, will obstruct any street. The streets in this vicinity are not used for general travel, but principally for the passage of wagons and carts loaded with bricks and other heavy freights passing from Virginia over the "Long Bridge." The contemplated improvement will be a positive benefit to the surrounding property.

That the said square is in the immediate vicinity of the Long Bridge, and is bounded by Water street, D and 14th streets southwest, and Maryland avenue; the distance from Maryland avenue to the nearest point of the square is about two hundred (200) feet. Water street, at this locality, although appearing as a public street on the plans of the city, has never been opened or improved, nor has it ever been used as a highway or thoroughfare by the public. There are no dwellings or buildings of any kind on the west of said square, it being practically on the bank of the Potomac river, and only one building north of and in immediate or close proximity thereto, and that building is not used for the purpose of a dwelling house, but is and for a long time has been used as a depot for stores belonging to the Quartermaster's Department of the Army of the United States. On the east side of 14th street, and between D street and Maryland avenue, there are only about four very small dwelling houses, and the distance between them and the square is so great that they cannot be injured, nor can the occupants thereof be annoyed by any use to which the square may be devoted by the complainant. This tract is one of the most convenient and suitable pieces of ground for the accommodation of the complainant's business and the business inter-

ests of the city of Washington which can be found along the line of the railroad.

That the use of the said square, and the contemplated stations, warehouses, and other works to be erected and used thereon, are necessary, proper, and expedient in the working of said railroad, and in the proper conduct of its business. Said square was selected and purchased at great expense for the purposes aforesaid, because its location and surrounding advantages made it especially suitable therefor.

That in consequence of the increase of the business of complainant in the city of Washington, and of the great increase in the wants and the supplies of the people, and of the great increase in the commercial business generally of the city of Washington, the other stations, and warehouses owned or used by the complainant, have become and are insufficient, both in number and in capacity, to furnish the proper facilities for the management and conduct of the said business.

That in order to reach this property with the least possible obstruction of the public streets, the complainant propose and desire to cross 14th street from its property (square 267) lying immediately east; this, however, is not necessary; the sidings can be laid along Maryland avenue in a curved line, and cross over the open paved space, constituting a part of the public street at this point, and lying between the main track of the company and the square.

That the defendants being advised of the purposes of the complainant, threatened and still threaten to prevent the company from laying any sidings whatever leading from its main tracks into this square, and to use the police force of the city of Washington for that purpose.

The defendants interposed a general demurrer to the bill, and the cause having been set for final hearing and having been argued by counsel, the bill was dismissed with costs. From this decree the complainant appealed.

The case was argued at length in the general term, before Cartter, Chief Justice, and Mr. Justice MacArthur and Mr. Justice James, and received much consideration from the Court.

Enoch Totten, Esq., appeared for the complainant, and Messrs. Riddle and Miller, for the defendants.

Opinion of the Court by Cartter, Chief Justice.

In the case of the Baltimore and Potomac Railroad Company against James B. Edmonds, Joseph R. West, and Garrett J. Lydecker, Commissioners of the District of Columbia, we have a bill in chancery instituted by the complainant against the defendants for obstructing the exercise of their rights as a corporation in building a railroad track to square No. 233, ground, which the bill avers the company has purchased for the purpose of the convenience and necessities of the railroad "for warehouse and other purposes."

It is claimed by the bill that the complainants are authorized by legislative power to do this thing; that they had a sovereign grant of Congress to this end. On the other hand it is claimed by the respondents, that the exercise of this assumed right is an invasion of the dedicated rights of the public to the streets of the city of Washington, and that the respondents as guardians of the public rights of the citizens of Washington, were in duty charged with preventing it, as they have thus far done. Over this question of power arise the issues of this case, and it is a very serious case too. It is a grave case in the exercise of the political sovereignty of the District. It is a grave case when considered in the light of the construction of the corporate power of this corporation. And what renders the case graver, is the serious

attitude that has been assumed with reference to it. A corporation has attempted to exercise its corporate rights, and the municipal authority has arrested it by the supervention of the police force. This is what the bill complains of.

It is not a contested question that Congress has the sovereign power to dispose of this matter as it will, under the Constitution of the United States. As the municipal authority of this District, under the Constitution, it had the power to permit the advent of this railroad into this District for commercial purposes. In exercising its municipal sovereignty over the District in the light of the same constitutional authority, they had the power to ordain a political sovereignty here in guardianship of the streets. The whole subject was within the control of the law making power, and over that question no issue is taken in the argument of the case. It is not a question of the existence of the power, but of its exercise, and the limitations of the exercise of that power. The complainant in this case starts out with the proposition that they have a plenary right to do just what they are doing.

Entering into the act of incorporation of the road by authority of Maryland, and repeated again in the authority of Congress to enter this District, we are pointed to this language as vindicative of the plenary power conferred upon this corporation for commercial purposes:

> "The said road when completed not to be more than sixty-six feet wide, except at or near its depots or stations, where the width may be made greater, with as many tracks as the president and directors may deem necessary."

It is claimed on the one hand that here is a plenary grant to make this road at least sixty-six feet wide for commercial purposes. It is claimed on the other hand that this grant is qualified by the fact that it contemplated the rural existence of the road, and not its city existence. But

the language is left as it was found, and re-enacted by Congress in the terms they found it, and as far as it is capable of application to the condition of the District, it is the text of authority to the end for which it was designed.

Again, the court is pointed to the further language:

> "And they or their agents, or those with whom they may contract as their agents, may enter upon and use and excavate any lands which may be wanted for the site of said road or the erection of warehouses or other works necessary for the said road or for its construction and repair."

They say that here is the plenary grant not only to enter the District with the road, but to erect any works essential to the prosperity and purposes of the corporation. And it is very difficult to conceive how broader language could be used,—more ample phraseology to an end.

Here was a road running into the capital of the nation for its convenience and for the convenience of the public who might seek this centre of political power. Congress had seen fit to grant an act of incorporation running five miles or thereabouts, for this purpose, and evidently they intended it should answer the purpose for which it was designed, a public convenience, and provided that they might erect any works essential to the operation of the road.

How language more ample, more significant and comprehensive can be used than they have used here, it is difficult to imagine. It is as ample as the necessities of the subject. It is as ample as the reasonable conveniences of the subject. It is as ample as the commercial demands of this centre, through the agency of this road, could require. And I do not know that this proposition is controverted as an abstract proposition, for we have not met the subject of chief difficulty.

Again, we are pointed by the complainants to another passage in the act manifesting the same intention on the part of the law makers:

> "And may make and construct all works whatsoever, which may be necessary and expedient in order to the proper completion and maintenance of said road."

Now, inasmuch as "all" embraces the constituents of all, inasmuch as the larger embraces the lesser, and inasmuch as you cannot contemplate anything that is not covered by "all," it is claimed by the complainant in this case that they have the power to make "all" the necessary roads. A more plenary grant never was issued to a corporation. The corporation would have been empowered to do this without this phraseology, if it had not been named at all; if Congress had not taken the special pains to enumerate that they should construct "any and all works necessary" to this road, the law would imply it. The law creating a corporation with commercial powers and purposes, and revealing the commercial powers and purposes of its creation in the terms of its creation, carries with it all the implications that follow that grant, and there is no principle in the construction of corporate power better settled than that the clear expression of power brings with it all implications that are embraced in it. Even without this phraseology the power of the corporation would have been complete to do this, and I do not know that this is seriously controverted by the defendants; I have not heard it seriously controverted. We have not met the point at issue, yet, in this case. These considerations are considerations of authority and power that the complainants have tendered to the deliberation of the court as covering what they did. And the argument in response is not that they have not this power, nor that this commercial grant does not carry with it all of the authority essential to its practical execution; but it is insisted that

they are departing from it, going away from it, and beyond the grant of power, and seeking for their license outside of authority, and therein are invading the guardianship permitted to the Commissioners of the District over the highways of the District. There lies the point.

The language of the defense is practically this: You may come into the District of Columbia as Congress has authorized you to do. You may cross all the streets, from one to twenty-one, in traversing the District from one border to the other, doing no unnecessary damages, and interposing no unnecessary obstacle in doing it. You may do all that. But you shall not cross a street or depart from the line of your transit to build a depot, or to build a warehouse or a workshop, or a locomotive stable. You shall not command authority to cross a street for any of these purposes.

Now, it is not necessary for the court here to adjudge that the power exists to cross a street for the determination of this case, for here we have a mere proposition to leave the Avenue and pass over a highway, or a country dedicated to a highway, and to the first ground to be found of a private character. Within the track of the railroad, within the limitations of the street upon which the track of the railroad traverses, and without it, and within the border of the square that is proposed to be occupied, there is none but highway.

There is that undefined, ideal line between Water street and Maryland avenue that is ascertained by the projection of Maryland avenue, or the line of Maryland avenue, or emptying out of Maryland avenue into Water street, whichever you please; it is "street" all the time, and it is the street that would answer to the integrity of their action in the light of seeking contiguous property for corporation purposes. It is contiguous, for it is the nearest property in approach to the line of Maryland avenue that you can find, and you go over no other property to reach it.

Our streets are peculiar, as the geography of the city demostrates. We are furnished with right-angled highways, right-line highways, and we are furnished with oblique and acute angles; we are furnished with spaces, and we are furnished with that undefined marriage of highways with each other, and you cannot tell where the ceremony transpired except by an imaginary line; and upon the border of this enlargement lies square 233, and this company is charged with the gross offence of overleaping the boundaries of corporation authority in taking the first land that they can reach, over a highway.

It is perfectly obvious that in the sense and substantial intendment of Congress, even if they were confined to contiguous property for the display of depot or warehouse work, they have substantially complied with it in this instance. For it is the substance of the thing that the law is pursuing, and not its shadows. This corporation was incorporated for practical commercial work. These highways were pointed out in the cor-relation of that work, and if they cannot approach the site of highways where they mingle with each other to get to land, or to get to private land, you have practically defeated the purposes of the act of incorporation; and we think if the doctrine of contiguous territory obtain, as in the instance of this bill, this company has practically and fairly observed it in seeking block 233 through Water street, if that is the name of it, to its border.

But that does not satisfy my conclusion about the authority granted by this act of incorporation, individually. I only speak for myself in this. Here is an express provision in the original charter, re-enacted into the extending of the road into this District, and re-enacted again in extending the road through this District, that the corporators may cross the public highways of the District.

Now, is it rendered in the restricted sense, a right to cross it in the transit of the main line?

Not at all. The right to cross the highways is a right co-extensive with the legitimate necessities of the corporation, whether those necessities are manifested in the movements of a locomotive upon the line of transit, or manifested in its reaching out its short arms to warehouses, to locomotive stables, and to depots. They are as much identified with and coherent in the structure of the railroad as the main line, and all the phraseology applicable to the *termini* that is pronounced upon the main line is applicable all the way through. You cannot distinguish in the power. If one block is not large enough to accommodate the depot conveniences or necessities of a road, the same authority that permits them to cross a street in the transit of a road, permits them to cross a street in seeking another block most convenient to the one that they occupy, for the purpose of perfecting the conveniences and necessities of the road. And why not? Legislation is an intelligent exercise of power, working to a purpose. In this instance it is an excercise of power working to the purpose of accommodating this District with commercial easements in bringing the people and their products to it, and taking the people away from it, and it has not discharged its functions until it does it, and it cannot discharge its functions properly until it is equipped with all the appointments necessary to do it, and the appointments occupying these squares are just as necessary as anything else.

But it is said they may wander all over your city, if that be the case. No, it does not follow at all that they may. There is no such vagrancy encouraged by the theory at all. They can follow just as far as the necessity, the reasonable necessity of the subject requires, and therein is interposed the guardianship of the courts. The courts, under all the authorities that have been presented, are invoked at this point to ascertain whether they are following vagrant ways, or whether they are legitimately enacting the functions of

their authority, and there is where the whole matter rests; there is where the whole matter rests in this case. Is this a reasonable appropriation of corporate power to the end of commercial necessity? Aud it is the only question, in my judgment, that appeals to the power of the court. It is not a question of squares; it is not a question of streets. It is a question of propriety in the squares and propriety in the streets. But these are my individual views of the subject, and I do not wish to charge them over to the account of the court; especially as the other proposition is ample to cover the ground that the court has unanimously taken.

This court from time to time, has been called upon, in administering the fate of this road judicially, to clean out the streets from one end of them to the other. It has told this company that they should not stop in the streets. It has said "You shall not unload your freight here; you shall not load it; you shall not make a stable of this street for your locomotives or your cars either; you are not going to let out offensive stock to stand here; this is not a hog-yard, and you will not be permitted to do it." The court has cleaned up this Maryland avenue from one end to the other, by decree and judgment, until this corporation is pretty much ruled out of these streets, except for transit. They can move through them, but they cannot stop on them for freight or depot purposes. "Move on," has been the language of the court in dealing with this corporation. Well, we have got them out of the street, and now what happens? The guardians of this road on the outside come into court here, or rather they are brought into court, and tell the court that they are not permitted to go anywhere else.

What is the effect of all this, except to repeal the act of incorporation which created the company? "You cannot do anything in this street; you cannot do anything out of the street, because you cross a street, or because you cross 200 feet of undefined street occupied for nothing else."

The result of it would be, as is perfectly obvious to everybody, to cripple and defeat the objects of the corporation, and to defeat the ends of public interest, as well as to defeat the ends of Congressional purpose, if it is carried out.

Why, it is said, they can go somewhere else. Well, it does not appear in this case that they can. All the testimony before us in this case is to the effect that square 233 is eminently the proper place for it. Even counsel say that if authority will permit them to pass a street, they cannot be stowed away any better that they know of than on square 233; and anybody who looks at the geography of the Island an instant, will see that it is pre-eminently the proper place, because it is right on the skirt of population—beyond it—it is on the skirt of the marsh; it has been inhabited for seventy years by nothing but toads, and is a common dumping ground. You could not go further from the city, in the distance you travel to get to it, than to go on to block 233. It is the last jumping-off place. It is block 233, and then the swamp, and if there is any place inoffensive to public taste, it seems to us that they have found it here; no neighborhood to be discommoded by it, and we are not left to conjecture upon the subject. A large body of substantial business men, reflecting the commercial interests of the District, by testimony, say that this is eminently the proper place to put this road into stable, and hope that the Commissioners will permit it to be done.

These views, generally expressed, have operated with the court to grant the injunction prayed for in this bill, and to permit this company to go on its way.

Mr. Justice MacArthur concurred in the views of the Chief Justice.

Mr. Justice James said:

The question is simply one of construction of the charter. Congress has said that the track shall not be wider than

sixty-six feet, except at the depots and stations, and has provided for taking land necessary for the purposes of the road. The implication is that the depot grounds are to be along the line prescribed. In applying this to the peculiar plan of Washington, I have arrived at the conclusion that the company is authorized to take and use for depot purposes, any lots between the front of which and the line of the road no other lots intervene. For the purposes of this act such lots may be said to front upon and lie along the road. This would give authority to use as depot grounds, with the turnouts necessary to reach it, a lot which fronts, as the lot in question does, towards Maryland avenue, although, by the recess caused by the intersection of several streets, it does not touch that avenue. It is unnecessary to consider in this case complainant's argument that the charter authorizes it to take, and construct approaches to, even a second tier of lots, not fronting in any sense on Maryland avenue, in case they should be necessary.

MR. RIDDLE said: I will take leave to answer this Bill, as you simply overrule my demurrer. I have some very grave questions which I wish to present to this Court before the matter is finally disposed of.

After a short discussion between Mr. Riddle and Mr. Totten the Chief Justice said:

The CHIEF JUSTICE: I would rather the motion should be reduced to writing, with the reasons for it, and if those reasons are a new discovery of facts, or a contradiction of facts, we will advise concerning it. But the law cannot be reviewed again here. This decision is final, so far as this Court is concerned, with reference to the law of the case.

[Copy of Decree.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, *Complainant*, *vs.* JAMES B. EDMONDS, JOSEPH R. WEST, AND GARRETT J. LYDECKER, Commissioners, District of Columbia, *Defendants.*	In Equity. No. 9262.

FINAL DECREE OF GENERAL TERM.

This cause came on to be heard on the appeal of the complainants from the decree of the special term, and counsel were heard, and upon consideration thereof, the court being of the opinion that the complatnant, the Baltimore and Potomac Railroad Company, by virtue of the powers and privileges to it specially granted by the statutes of the United States in the premises, is fully authorized and empowered to occupy and use the square in the city of Washington known and distinguished on the plan of said city, as square numbered two hundred and thirty-three (233) for the purposes of its business; and that it is fully authorized and empowered to enter the same by crossing Fourteenth street (14th) with its railroad tracks from the south part of square numbered two hundred and sixty seven (267), and the said defendants, after the announcement by the court of its decision, having moved the court for leave to file an answer to said bill, (with a map or diagram,) *nunc pro tunc*, it is thereupon this 10th day of March, 1885, by the said General Term, ordered, adjudged and decreed that the said defendants be, and they are hereby granted leave to file said answer (and exhibit) *nunc pro tunc*: and thereupon the

cause proceeded at once to hearing on the pleadings as thus made up.

And thereupon it is further ordered, adjudged and decreed that the decree of the Special Term be and the same hereby is reversed, and that the said defendants, James B. Edmonds, Joseph R. West and Garrett J. Lydecker be, and they hereby are, and each of them is, restrained and perpetualty enjoined from, directly or indirectly, or in any manner whatever interfering with, or disturbing, or interrupting the said Baltimore and Potomac Railroad Company, its officers, agents, workmen or laborers, or any of them, in the work of putting down railroad tracks on, over and across Fourteenth (14th) street to connect, and connecting said square numbered two hundred and sixty-seven (267) with the said square numbered two hundred and thirty-three (233) in said city, and from in any way, directly or indirectly, interfering with, or disturbing, or interrupting the occupation, use, or repair by said complainant of said railroad tracks; and said defendants, James B. Edmonds, Joseph R. West and Garrett J. Lydecker, are also further perpetually enjoined and restrained from ordering, directing or permitting any officer or employee of the District of Columbia, or any officer or member of the Metropolitan Police force, directly or indirectly, to interfere with the said complainant in its construction, use, occupation or repair of the said railroad tracks.

It is further ordered, adjudged and decreed that the complainant recover of and from said defendants, the costs of this suit to be taxed by the clerk, and that execution issue against said defendants, as at law.

And from this decree the defendants pray an appeal to the Supreme Court of the United States, which is allowed.

By the Court—

D. K. Cartter,
Chief Justice.

114-453

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1283.

J. B. EDMONDS *et al.*,
COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APELLANTS,

vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, APPELLEE.

In Equity. On Appeal by the Commissioners from the Supreme Court of the District of Columbia. Bill for Injunction only.

BRIEF OF A. G. RIDDLE FOR APPELLANTS.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1283.

J. B. EDMONDS *et al.*,
COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APELLANTS,

vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, APPELLEE.

In Equity. On Appeal by the Commissioners from the Supreme Court of the District of Columbia. Bill for Injunction only.

BRIEF OF A. G. RIDDLE FOR APPELLANTS.

CASE IN SHORT.

Bill sets forth that the plaintiff was incorporated by act of the Maryland Legislature. Various acts of Congress authorize it to enter the District and traverse the city of Washington. The act of Congress of June 21, 1870, authorized it to run along Maryland avenue to and over the Potomac river on the Long Bridge. Says it owns square 233 and south half of square 267. It wishes to construct depots on 233, and, by crossing its part of 267, to occupy its said property in said 233. To do this it must cross 14th street west, or by side tracks reach the desired point, which also re-

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1283.

J. B. EDMONDS *et al.*,
COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APELLANTS,

vs.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, APPELLEE.

In Equity. On Appeal by the Commissioners from the Supreme Court of the District of Columbia. Bill for Injunction only.

BRIEF OF A. G. RIDDLE FOR APPELLANTS.

CASE IN SHORT.

Bill sets forth that the plaintiff was incorporated by act of the Maryland Legislature. Various acts of Congress authorize it to enter the District and traverse the city of Washington. The act of Congress of June 21, 1870, authorized it to run along Maryland avenue to and over the Potomac river on the Long Bridge. Says it owns square 233 and south half of square 267. It wishes to construct depots on 233, and, by crossing its part of 267, to occupy its said property in said 233. To do this it must cross 14th street west, or by side tracks reach the desired point, which also re-

quires it to cross 14th street. That, pursuant to the fourth section of the act of the District Legislature of August 23d, 1871, the appellee notified the defendants that it would, on a day named, proceed to lay its tracks across 14th street, and was prevented by an armed police force acting under the orders of said Commissioners. Claims the right to so cross, and prays that the Commissioners be enjoined from hindering them from so doing.

The defendants below demurred to the bill.

Court in special term sustained the demurrer, and the Railroad Company unable to amend, a final decree followed, dismissing the bill, and the Company appealed.

On hearing, the general term reversed the decision, overruled the demurrer, granted leave to answer, and the case was heard on bill, answer, and exhibits. The court finding the equities with the Company, made a final decree enjoining the District Commissioners, as prayed for in said bill.

From this decree the Commissioners appeal to this court.

ASSIGNMENT OF ERRORS.

The court below erred in holding that the matters and things set forth in the bill were sufficient in law to entitle the Railroad Company to the relief prayed for.

The court erred in holding that the acts of Congress, authorizing the Railroad Company to lay its track along Maryland Ave. and along and over the Long Bridge, thereby gave the appellee the right to lay a track across 14th St., from Sq. 267 to Sq. 233.

The court erred in holding that under said acts, and the statutes of Congress protecting the streets, avenues, open spaces, and public grounds of the District of Columbia, and the acts of Congress of February 21, 1871, of June 20, 1874, and of June 11, 1878, the Railroad Company can cross a street of the city which does not lie across its prescribed

route, nor between any two points it is directly authorized to connect by its track.

The court erred in holding that the Railroad Company has the right to cross a street of the city which it is not authorized to cross with its main track, for the mere purpose of reaching a suitable place for a warehouse in said city.

Points Made.

This whole matter may be summarized under two general heads:

I.

Has the Railroad Company the right to construct a track from its main stem to its property—square 233—across 14th St.?

II.

Have the Commissioners of the District of Columbia a right to prevent such action by the plaintiff?

To a correct apprehension of these questions two other things are necessary to be first considered:

First. As to the *locus.*

To cross, as proposed, is to traverse 14th street directly.

To enter square 233 by side tracks as suggested is to traverse a space—parts of 14th, Water, and E streets and Maryland avenue—in common. This is not involved in the case however.

For the law protecting open spaces—public streets—from use by any private person for any purpose whatever, see Sec. 222, Rev. Stats. D. C., pp. 25, 26.

Section 224 prohibits the use of streets by street railroads without express authority from Congress.

Section 226 requires all obstructions of every kind to be

removed from all streets, avenues, and sidewalks improved by aid from the United States, as these streets were.

Section 227 requires suits to be instituted against all parties so obstructing streets, avenues, and sidewalks.

Section 229 denounces a penalty against any person obstructing such street, avenue, or sidewalk.

Such is the *locus* and such the law protecting it.

Second. What are the duties and powers of the appellant Commissioners in the premises?

Section 77, Revised Stats. D. C., places all streets, avenues, sidewalks, alleys, and sewers within the entire control of the Board of Public Works created by the act of February 21, 1871.

Acts of June 20, 1874, (18 Stats., 116), and of June 11, 1878, (20 Stats., 102), confer these powers and duties upon the present Commissioners.

I. Now, how fares the first of our two propositions.

The land dedicated to the public as a street confers upon the public a paramount right, over and above all others, to which even the sovereign can dedicate it.

Congress can lay upon it an additional servitude subordinate to this paramount right of the public.

Whoever claims that Congress has laid upon it this additional burden in derogation of the public right must show it by unequivocal grant, express or implied. No one questions these propositions.

Congress granted to the plaintiff the right to lay its tracks along Maryland avenue to and over the Long Bridge. This brings the plaintiff within 200 feet of the nearest point of square 233. That is to say, Congress came within 200 feet of authorizing the plaintiff to lay a track to square 233.

And the plaintiff comes within a little over 12 rods of making a case for an injunction—stating the case with rude succinctness.

II. As to the second—

The plaintiff gave formal notice that he would appear at the point indicated and lay its track across 14th street at the named time.

a. It had no shadow of right to do so.

b. It was a punishable offense to do it.

c. The *locus* was specially within the power of the Commissioners, under authority of the United States, whose duty it was to prevent the threatened invasion of it by the Railroad Company. And they did; will continue to do so, unless restrained by the court, or until Congress grants a license to the plaintiff to lay its track as proposed.

The claim of the appellee is that the right to enter and traverse a portion of the city gives it by necessary implication a right to acquire property convenient for warehouses and depots in the city and construct the necessary tracks to them and cross a street for this purpose if necessary.

a. To this it is urged that, to indulge this implication, it is necessary to cross a public street which express statute law has dedicated to a paramount public purpose, which this implication cannot repeal, overcome, or modify. An implied grant of this character cannot prevail against an express grant.

b. That in no event could this implied right to cross a street be allowed, except upon the clearly shown right to establish warehouses and depots in the city, and that no other site for them than that proposed can be found.

The bill makes no such case of necessity.

Clearly the holding of the court below cannot be sustained and the injunction should be dissolved.

A. G. RIDDLE,
For Appellants.

APPENDIX.

An act regulating appeals from the supreme court of the District of Columbia and the supreme courts of the several Territories.

Be it enacted, &c., That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the supreme court of the District of Columbia, or in the supreme court of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

SEC. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute.

Approved March 3d, 1885.

114-453

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CLERK

Supreme Court of the United States.

OCTOBER TERM, 1884.

JAMES B. EDMONDS *et al.*, *Appellants*, *Commissioners, &c.*,

vs.

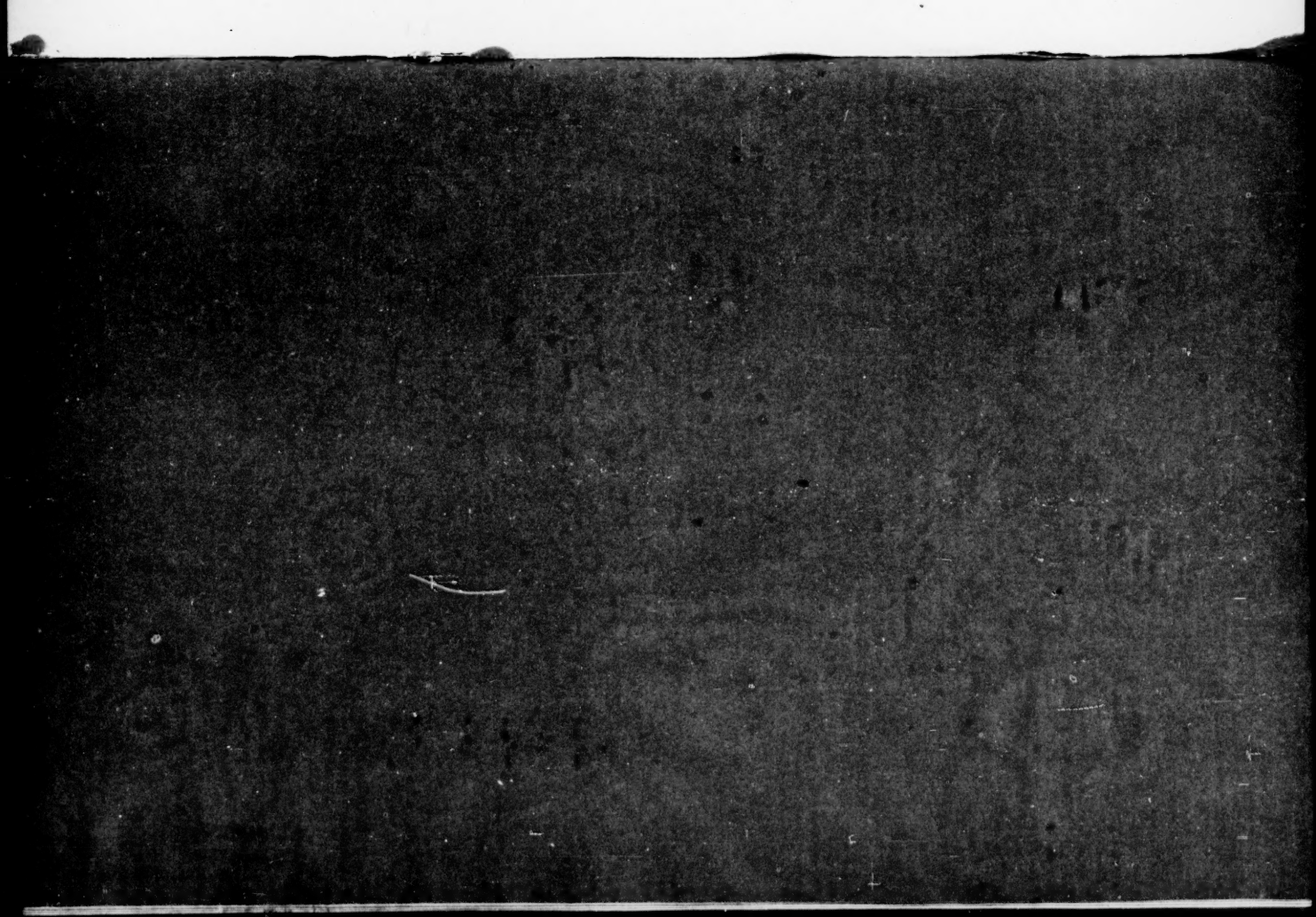
THE BALTIMORE AND POTOMAC RAIL-ROAD COMPANY, *Appellee.*

No. 1,283.

Brief for Appellee.

ENOCH TOTTEN,
Counsel for Appellee.

R. O. Polkinhorn & Son, Printers



Supreme Court of the United States.

OCTOBER TERM, 1884.

JAMES B. EDMONDS *et al.*, *Appellants*, *Commissioners*, &c.,

vs.

THE BALTIMORE AND POTOMAC RAIL-ROAD COMPANY, *Appellee.*

No. 1,283.

Brief for Appellee.

The complainant exhibited its bill in the court below, Dec. 30, 1884, praying an injunction to restrain the defendants, who are Commissioners of the District of Columbia, from interfering with its work of laying tracks from its main line of railroad to the square of ground owned by it known as square number 233, adjoining its line of road.

Statement of Facts.

In consequence of a great increase in the business of the complainant, and the inadequacy of its warehouse and track accommodations for such business, it purchased the square of ground before mentioned for about the sum of $23,000,-00. This square contains nearly one and a half acres of ground, and is especially adapted to and appropriate for the uses and necessities of the company in the proper conduct of its business. It is located in a sparsely inhabited part of

the city, and will not incommode private persons; the proposed tracks leading to it will not obstruct the use of the streets to any greater extent than the presence of railroad tracks, skillfully laid, will obstruct any street. The streets in this vicinity are not used for general travel, but principally for the passage of wagons and carts loaded with bricks and other heavy freights passing from Virginia over the "Long Bridge." The contemplated improvement will be a positive benefit to the surrounding property.

The said square is in the immediate vicinity of the Long Bridge, and is bounded by Water street, D and 14th streets southwest, and Maryland avenue; the distance from Maryland avenue to the nearest point of the square is about two hundred (200) feet. Water street, at this locality, although appearing as a public street on the plans of the city, has never been opened or improved, nor has it ever been used as a highway or thoroughfare by the public. There are no dwellings or buildings of any kind on the west of said square, it being practically on the bank of the Potomac River, and only one building north of and in immediate or close proximity thereto, and that building is not used for the purpose of a dwelling house, but is and for a long time has been used as a depot for stores belonging to the quartermaster's department of the Army of the United States. On the east side of 14th street and between D street and Maryland avenue there are only about four very small dwelling houses, and the distance between them and the square is so great that they cannot be injured, nor can the occupants thereof be annoyed by any use to which the square may be devoted by the complainant. This tract is one of the most convenient and suitable pieces of ground for the accommodation of the complainant's business and the business interests of the city of Washington which can be found along the line of the railroad.

The bill alleges that the use of this square is necessary,

proper, and expedient, and that it is, by its location and surroundings, peculiarly suited for the uses of the complainant in the management of its business. Many affidavits were filed and submitted in support of the averments of the bill. These facts, as above set forth, are undisputed and are indisputable.

In order to reach this property with the least possible obstruction of the public streets the complainant proposes and desires to cross 14th street from its own property (square 267) lying immediately east; this, however, is not necessary; the sidings can be laid along Maryland avenue in a curved line, and cross over the open paved space, constituting a part of the public street at this point and lying between the main track of the company and the square. By crossing 14th street about 90 feet of track will be laid in a straight line on and across a public street, while by the other way there will be about 500 feet of track in the street and in a curved line.

The defendants being advised of the purposes of the complainant, threatened to prevent the company from laying any sidings whatever leading from its main tracks into this square, and to use an armed force for that purpose.

The general term of the court below granted the injunction as prayed, and the commissioners have appealed to this court.

Points and Authorities.

The sole matter of dispute in this case is whether the appellee is authorized by law to use for its works, and its station and warehouse accommodations, real property abutting upon the undefined highway spaces created along the line of its road by the intersection of the lettered and numbered streets in the city of Washington, running north and south or east and west with Maryland avenue, which runs diagonally

to them, or whether it is confined for such purposes, to such tracts of ground as abut squarely and fully against that avenue. The Commissioners insist upon the latter and narrow construction, and the court below decided in favor of the former.

The principle powers of the railroad company are derived through the original charter of 1853, granted by the State of Maryland, and adopted by the act of Congress of 1867. The 12th section of the act of incorporation contains the main grant of power, and that section is set out in full in the original bill in this cause.

That section declared that this railroad company shall be and is "*invested with all the rights and powers necessary to the construction, working, use, and repair of a railroad*" from, &c., to &c., "*said road, when completed, not to be more than sixty-six feet wide, except at or near its depots or stations, where the width may be made greater, with as many tracks as the president and directors may deem necessary.*" And that said company "*may enter upon and use and excavate any lands which may be wanted for the site of said road or the erection of warehouses or other works necessary for the said road or for its construction and repair*, and that they may build bridges, fix scales and weights, *lay rails*, may take and use earth, gravel, stone, timber, or other materials which may be needed for the construction and repair of the said road or any of its works, and *may make and construct all works whatever which may be necessary and expedient in order to the proper completion and maintenance of the said road.*"

The first section of the act of Congress of February 5, 1867, (14 Stat., 387,) adopting the charter of the company granted by Maryland, is as follows:

> "WHEREAS, it is represented to this present Congress that the Baltimore and Potomac Railroad Company, incorporated by an act of the General Assembly

of Maryland, entitled 'An act to incorporate the Baltimore and Potomac Railroad Company,' passed the sixth day of May, eighteen hundred and fifty-three, are desirious, under the powers which they claim to be vested in them by the provisions of the before recited act, to construct a lateral branch from the said Baltimore and Potomac railroad to the District of Columbia:

"*Therefore be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Baltimore and Potomac Railroad Company, incorporated by the said act of the General Assembly of Maryland, shall be, and they are hereby, authorized to extend to and within the District of Columbia, a lateral branch, such as the said company shall construct or cause to be constructed, in a direction towards the said District, in connection with the railroad which they are about to locate and construct from the city of Baltimore to the Potomac river, in pursuance of their said act of incorporation; and the said Baltimore and Potomac Railroad Company are hereby authorized to exercise the same powers, rights and privileges, and shall be subject to the same restrictions in the extension and construction of the said lateral railroad into and within the said District as they may exercise or are subject to, under and by intent of their said charter or act of incorporation, in the extension and construction of any railroad within the State of Maryland, and shall be entitled to the same rights, compensations, benefits, and immunities, in the use of the said road, and in regard thereto, as are provided in their said charter, except the right to construct any lateral road or roads within the said District; from the said lateral branch or road hereby authorized, it being expressly understood that the said Baltimore and Potomac Railroad Company shall have power only to construct from the said Baltimore and Potomac railroad one lateral road within the said District to some point or terminus within the city and county of Washington, to be determined in the manner hereinafter mentioned."

By a statute enacted June 21, 1870, (16 Stat., 61,) the company was authorized to extend its railroad from the

original terminus, fixed by another act of Congress (16 Stat., 1,) of March 18, 1869, along Maryland avenue and across "Long Bridge."

The following is the first section of that act, to wit:

> "That the Baltimore and Potomac Railroad Company be, and they are hereby, authorized and empowered *to extend their lateral branch, authorized by the act to which this is a supplement*, and by former supplements to said acts, by way of Maryland avenue, conforming to its grade, to the viaduct over the Potomac river, at the city of Washington, known as the Long Bridge, and to extend their tracks over said bridge, *and connect with any railroads constructed, or that may hereafter be constructed in the State of Virginia.* To effect these purposes the said Baltimore and Potomac Railroad Company is hereby authorized and empowered to take possession of, change and use the bridge and the draws connected therewith, in perpetuity free of cost: *Provided*, That the said Baltimore and Potomac Railroad Company will maintain in good condition the said bridge for railway and ordinary travel; and the bridge shall at all times be and remain a free bridge for public use for ordinary travel; and provided further, that the said Baltimore and Potomac Railroad Company *shall erect* and maintain *the draw-bridges so as not to impede the free navigation of the Potomac river, and in efficient working condition at all times*; and that until such time as the needful changes are made to accommodate railroad and other travel and traffic, as contemplated by this supplement, it shall be the duty of the said Baltimore and Potomac Railroad Company to repair all damages to the present bridge, and maintain it without cost to the United States; *Provided*, That said Railroad Company *shall give other railroad companies the right to pass over said bridge upon such reasonable terms as may be agreed upon or Congress prescribe.*". (16 Stat., 161.)

It is hardly susceptible of a doubt that Congress intended by these statutes to clothe this company with all the powers

necessary to construct and operate a railroad within the city of Washington commensurate with any future needs which might be created by the increasing prosperity and commercial wants of the people of this District, and of the whole country. Language could not well be more ample or comprehensive.

This new and antagonistic attitude assumed by the appellants is not, in my judgment, in the interest of the commercial welfare or general prosperity of the people of this District and, I suggest, is a step backward instead of forward with the advancing improvements of the age in which we live. If this Court shall adopt the principles sought to be enforced by the appellants, the unavoidable effect, it seems to me, must be to reduce this city to the rank and facilities of a "way" station. It is plain, from the tenor of the statutes above cited on this subject, that the intention of the legislative mind was to make the Capitol of the nation a center of travel and of commerce, and not to preserve it the provincial village it was before the rebellion. It should not be forgotten that at the time when these statutes were passed and approved, there was no direct communication by railroad between the north and the south, and this railroad, at the present date, is the only line of communication in existence in this latitude between these two sections of the country.

If the company cannot secure the use of grounds within the limits of the city and adjacent to its line of tracks necessary for warehouses, depots, stations, how can it accomplish the object for which it was ordained? It may as well be excluded wholly from the city.

The position assumed by the appellants, as I understand it, is that the company cannot be permitted to gain access to this tract of ground by either of the two routes mentioned, because the proposed curved line would cross either

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The position assumed by the appellants, as I understand it, is that the company cannot be permitted to gain access to this tract of ground by either of the two routes mentioned, because the proposed curved line would cross either

14th or Water street, or both, and that no authority can be found in law for either line.

It cannot be said, upon any fair construction, that a siding extending from the main tracks on Maryland avenue on a curved line, to this piece of ground, would pass over any part of either 14th or Water streets. But it seems to me wholly immaterial whether we call this street by one name or by another. This intervening ground is adjacent to the street and connects the square with it. But it is submitted to the Court, that if it be true that the greater includes the less, such a siding would fall wholly on Maryland avenue. This space, lying between the main track and this square, is formed by the junction of the three streets at this point, and it may as well be called Maryland avenue as Water street, and it is no more Water street than 14th. If this be not so, then by parity of reasoning the whole space to the width of eighty (80) feet at the head of Long Bridge is Water street, inasmuch as Water street extends along the entire river front. It may also be argued that the company has no right to extend its tracks across this space, thus called Water street, to reach Long Bridge, because no authority can be found in the statutes to cross Water street. The same reason may be applied against the right of complainant to pass over any transverse street. This is especially so at the junction of C, 7th, 8th, and 9th streets with Maryland and Virginia avenues. It may as well be said that the company is without right to construct its tracks over the very large space created by the intersection of these streets as to say that it is without authority to cross the space in front of square 233. This space, at the junction of Maryland and Virginia avenues and C, 7th, 8th, and 9th streets, is about 380 feet wide by about 900 feet long. An inspection of a map showing the various points at which the lettered and numbered streets intersect Virginia and Maryland avenues along the line of this rail-

road will show a large number of spaces of irregular shapes and of different sizes, formed by such intersections.

It is the established law of this Court that whenever a statute authorizes the construction and operation of a railroad, the authority is necessarily implied to construct warehouses, stations and other works, and to construct side-tracks communicating between them and the main line of the road.

In the case of *Township of Rock Creek* vs. *Strong*, (96 U. S., 276,) this Court speaking on this subject used this language:

> "Like all expressions of legislative will, this provision of the act must receive a reasonable construction, and we cannot doubt that in the grant of power to aid in the construction of railroads or other works of internal improvement is included authority to assist in the construction of depots and side-tracks of a railroad. Such constructions are constituents, essential parts of every railroad, without which it would be incomplete and incapable of serving the uses for which it is intended. The cost of building them is always, and properly, charged to construction account, and not to repairs or expenses of operation; and a mortgage of a railroad, without further description than such as is necessary to identify it, covers its side-tracks and depots."

In the case of *Lake Superior R. R. Co.* vs. *U. S.*, (93 U. S., 453), language equally apt and strong was used by the Court when discussing the same question. Should additional authorities be required, the following cases in various ways assert the same doctrine:

Enfield Toll Bridge Co. vs. *Hartford & N. H. R. R. Co.*, 17 Conn., 454;
Black vs. *Phil. & R. R. R. Co.*, 58 Pa. St., 249;
Speer vs. *R. R. Co.*, 56 Pa. St., 325;
Turnpike Co., vs. *Camden & Amboy R. R. Co.*, 2 Harr., N. J., 314;

Duncan vs. *R. R. Co.*, 94 Pa St., 435;
Cathron vs. *R. R. Co.*, 2 Phillips, 469 (Eng. Ch.);
P. W. & B. R. R. Co. vs. *Williams*, 54 Pa. St., 103;
Com'th vs. *Haverhill*, 7 Allen, 523;
Toledo & W. R. R. vs. *Daniels*, 16 Ohio St., 390;
N. Y. & H. R. R. vs. *Kip*, 46 N. Y., 546;
Protzman vs. *R. R. Co.*, 9 Ind., 469;
R. R. Co. vs. *Municipality*, 1 La. Ann. 128.

The question has sometimes arisen as to how far from a terminus of the main line a railroad company might depart for the purpose of locating its stations. In the case of *Protzman* vs. *R. R. Co.* (9 Ind. 469), the company was sustained by the court in going a distance of 200 *rods* from the statutory terminus to secure a depot location in one of the cities of Indiana. The court said:

> "At the *termini* of railroads, depots are necessarily erected; at these depots the main business of the roads must be discharged; trains of freight and passenger cars and locomotives must be kept in reserve and must stand while being loaded and unloaded, &c. In short, about a depot, tracks must necessarily be extended on every side for the accommodation of the company and the public in the transaction of business, and companies have the implied powers, under their charters, to make such as are reasonable and necessary; we think an extension of *200 rods* of such an important business road as we know that in question to be, was not unreasonable; lands may be taken for depots, as well as for roads, of which they are a necessary incident."

The same liberality of construction will be found in the case of *R. R. Co.* vs. *Municipality*, 1 La. Ann. 128.

The distance proposed to be traversed here is only 200 *feet* from the main line, but not from the terminus. If this is an unreasonable length of side track how far may the company go beyond its main line?

The only limitation on the right of the company to be found in the statute as to occupying property, is in the third section of the act of 1867, which prohibits the "entry" by the company on "any *lot or square*, or upon any part of any *lot or square owned by the* United States" to locate or construct its road or to "excavate."

It is not denied that this ground is the most suitable place for the proposed improvements.

If the company may enter upon and use "*any*" lands which may be "*wanted*" for *warehouses* or other *works*, why shall it not be allowed to enter square 233? Is it because the square does not actually touch an imaginary building line of Maryland Avenue, if there were no Water street or Fourteenth street here? If this square could not have been purchased could it have been condemned under the statute?

The attention of the Court is invited to the opinion of the court below in this cause, especially in reference to the above suggestions.

An express direction in reference to crossing public streets is found in the third section of the act of February 5, 1867, (14 Stat., 387,) and it seems to be an enlargement rather than a limitation of power. It is in these words:

> "That whenever the *said company*, in the construction of its railroad into or within the said District, as authorized by this act, *shall find it necessary to cross or intersect any established road, street, or other way*, it shall be the duty of the said company so to construct the said railroad across such established road, street, or other way as not to impede the passage or transportation of persons or property along the same."

The streets or spaces which the appellee desires to cross are all the property of the United States. But there is neither a lot nor part of a lot, or a square or part of a square.

The United States may dispose of these spaces or streets in such manner and for such uses and purposes as the legislative branch of the Government may deem expedient or proper. (*Van Ness* vs. *City of Washington*, 4 Peters, 232.) Even an ordinary municipal corporation, where the fee of the street is in the abutting owners, may grant the use of the street for railroad purposes. (*Barney* vs. *Keokuk*, 104 U. S., 324.)

For the implied authority of a railroad company to construct its road on and over the public domain, see

Black River Import. Co. vs. *La Crosse Co.*, 54 Wis., 659;

State vs. *R. R. Co.*, 3 Ind., 421;

R. R. Co. vs. *R. R. Co.*, 8 C. S. Green, 157;

Davis vs. *R. R. Co.*, 1 Sneed, 94:

U. S. vs. *Bridge Co.*, 6 McLean, 517;

The power of determining whether or not depots and stations are *necessary and expedient*, and *where* they shall be erected, is by the statute confided to the president and board of directors of the company. And when they have once exercised that power in good faith their judgment will not be reviewed by the courts. The Supreme Court of Wisconsin in discussing this doctrine uses this language:

> "So far as the judge below placed his decision on the ground that there was no *necessity* of appropriating the street to the use of the railroad, because there were other adjoining lands which could be as conveniently occupied for that purpose, he was clearly in error. The propriety of taking property for public use is not a judicial question, but one of political sovereignty, to be determined by the legislature, either directly or by delegating the power to public agents, proceeding in such manner and form as may be prescribed. *Whether the company should appropriate this particular piece of land or that to the use of the road was, therefore, under*

their charter, a matter which was committed strictly to their discretion; and the logic of the county judge, if good for anything, would be sufficient to defeat the company's locations of the line of their road in ninety-nine cases out of every hundred; for in about that proportion of instances, the land selected is not so indispensably necessary that some other might not be taken without very great inconvenience."

Ford vs. *The Chicago and Northwestern Railroad Company*, 14 Wis., 761.

To the same effect are the following decisions:

N. Y. H. R. Co. vs. *Hip.*, 46 N. Y., 546;
Giesy vs. *R. R. Co.*, 4 Ohio St., 308;
Brainard vs. *Clapp*, 10 Cush., 6;
Curtis vs. *R. R. Co.*, 14 Allen, 55;
Pierce on Railways, 148, 160, 494;
Hawley vs. *Steele*, 6 Ch., Div. 521;
See *Speed* vs. *U. S.*, 8 Wall, 83;
Fall River Co. vs. *R. R. Co.*, 5 Allen, 221;

A question closely akin to that involved here has arisen frequently in cases growing out of the efforts of railroad corporations to condemn private property for depots, stations, works and warehouses. In the case of *N. Y. & H. R. R. Co.* vs. *Met. Gas Light Co.*, (63 N. Y., 326,) the court used the following language:

"To make out a case within the statute under which this proceeding is instituted, the land, the acquisition of which is sought, must be 'for the purpose of the incorporation, or for the purpose of running or operating the road' of the petitioner. What may be required in the exercise of this power has been defined by this court in several cases. *In re N. Y. and H. R. R. Co.* vs. *Kip* (46 N. Y., 546), it was held that the only limit of the grant of power sought to be exercised under the act, is the reasonable necessity of the corporation, in the discharge of its duty to the public. See, also, *In*

re B. and A. R. R. Co. (53 N. Y., 574), where this principle was endorsed, and it was stated that there must not be an evident and apparent absence of all occasion or necessity for the property, for the legitimate purposes of the corporation.

'In the case first cited, Allen, J., after stating that the right to take land for some purposes, which are named, is not included in the grant, proceeds to say that—

"Passenger depots, convenient and proper places for the storing and keeping of cars and locomotives not in use, * * * * for the receipt and delivery of freight, and for the safe and secure keeping of property between the time of its receipt and dispatch, or after its arrival and discharge and before its removal by the owner or consignee, are among the acknowledged necessities for the running and operating of the railroad to the proper prosecution of its business in the interests of the public. They may be regarded as indispensable to the accomplishment of the general puposes of the incorporation, and the design of the legislative grant.'

"The rule here laid down furnishes a broad field for the exercise of the power which the statute confers; and if it appears that the acquisition of the property is demanded for the legitimate purposes of the corporation, a case is established within the authorities cited.

"To a large extent the company is to determine, under the delegation of power to it by the State, the extent of its wants, and to fix upon the location of lands subject to the qualification, that the purposes for which the land is to be taken are strictly within its charter. Where a reasonable necessity is shown, a reasonable discretion must be exercised, and the courts will not interfere to control that discretion, unless it will result in great injury, or is influenced by some improper motive.

"The testimony taken before the referee in this case presents a state of facts which establishes that the petitioner has not facilities sufficient for the delivery of grain and live stock, which are transported on their railroad, at its termination in the city of New York. That increasing business demands more extensive ac-

commodations, by adding to its real estate, and with its existing property there is a want of facilities to meet the demands of the public, and to transact its business with expedition, and a due and proper regard to the public interests. Its real estate is limited, and what it now owns, which is not fully occupied, is utterly inadequate for the purposes named. It requires still more, and cannot discharge properly the freight which accumulates on its hands for the want of lands to lay down the necessary tracks and other improvements which are required, and the property which it seeks to acquire will not be more than adequate for that purpose. The land of the appellant is already crossed by some five tracks, and the tract of land, to obtain which this application was made, lies adjoining these tracks, and is essential for the purpose of laying other tracks, to enable the railroad company to reach their stock yards and river front, and to render them advantageous and convenient. Without this land no other convenient or easy access can be procured to the property, and, as a consequence, trains must be broken up and divided, delays caused, and obstructions created, which are injurious both to the business of the petitioner and the public, and may be the occasion of dangerous collisions and accidents.

"Upon the facts presented, there appears to be no serious question that the acquiring of the land of the appellant is necessary and proper, and clearly within the meaning and purpose of the statute. It appears that a real necessity, which is the foundation of the right, exists, and that large interests are involved, and require the additional facilities which thereby will be furnished. It is not difficult to see that in so great a business center as New York, where is concentrated the internal commerce of the whole country, that large depots for freight, cattle and live stock, which are absolutely essential, and quite as much, perhaps even more, within the object of the act, and quite as necessary for the successful operation of the railroad and its business as any accommodations which may be required or furnished for passengers, or for any other portion of the traffic of the corporation. The application of the petitioner does not ask for the acquisition

of land beyond the legitimate requirements of trade and business, as already stated; and although it is claimed that the design of the proposed acquisition, in addition to these, is also for collateral enterprises, and, among others, for the benefit of stock-yards, elevators, and an abbattoir to meet the requirements of this class of business to be carried on in connection therewith by other persons outside of the company, this evidently is not the main purpose of the application. All of these may follow as a consequence and result, and some, if not all, of them may be very properly connected with the terminus of a great railroad corporation; but no land is required of the appellant to be taken for any such purpose, and therefore it is not necessary to determine whether such a purpose would be legitimate, or what effect such a use of the property would have upon this application. It is sufficient that the land is required for the construction of proper tracks and curves to enable trains of the petitioner's railroad, with convenience and proper dispatch, and without danger, to approach the station, cattle-yards, depot, elevator and other structures upon their water-front, and to render these important auxiliaries effective, useful and advantageous for the shipment and discharge of freight. Nor does it constitute any valid objection to the proposed improvement, or render it any less a public necessity, because, perchance, it might confer benefits and advantages upon business arising from structures which are really essential to the successful operation of a railroad enterprise, but which, of themselves, would not authorize the appropriation of land to insure their construction within the rules applicable to the exercise of the right of eminent domain.

In the case entitled *In Re* N. Y. C. & H. R. R. R. Co., (77 N. Y., 249,) the Court of Appeals of New York went still further in aid of public progress. That appears to have been an elaborately argued and well considered case, and involved the rights of railroad companies in reference to the public streets in New York City, and also in reference

to the acquisition of land under water for wharf purposes. The court held (as stated in the syllabus).

> "That corporations deriving power from the Legislature to take property under the right of eminent domain cannot exercise such power in reference to property already dedicated to public use, does not prohibit the acquisition of a right to use streets and avenues and piers at the end thereof included within land sought to be condemned for railroad purposes. Land under water in the Hudson river, with or without a water front, required by a railroad corporation for piers and wharves to facilitate the transportation of freight may be condemned by proceedings for that purpose."

See also *People* vs. *Brooklyn R. R. Co.*, 89 N. Y., 75; *Tenn. & A. R. R. Co.* vs. *Adams*, 3 Head, 597; *Commissioners of Long Branch* vs. *West End R. R.*, 29 N. J. Eq., 566.

In a case in the Supreme Court of Pennsylvania involving the right of a railroad to construct as a part of its road a turnout or siding connecting its main line with manufacturing or mining establishments, a right far more extensive and important than is claimed here, that court declared the law of that State to be in favor of the right, and said:

> "We cannot assent to the opposite contention, which holds that a side track which leads only to a manufacturing or mining establishment, held in private ownership, is illegal, because it does not subserve a public use. These establishments are very numerous, especially in Pennsylvania along and near a line of railroad. They serve to develop the resources of the State, they give employment to vast numbers of citizens, and constitute a most important element in the general wealth and prosperity of the community; convenience and consequent cheapness of transportation, are, in most cases essential, and in many, vital to their maintenance. Moreover, considerable portions of the general public are directly interested in the traffic which goes to them, and in that which comes from them. Hence, in the

connection in which we are now considering them, we cannot regard them as merely private interests, and therefore, without the pale of that public use, for which private property may be taken in the constructian of railroads lawfully established, and actually used for public purposes."

Getz' Appeal, 3 Am. & E. R. R. Cases, 186.

That court has very recently (January, 1885) had the same subject before it again, and it announced the same doctrine in very unevuivocal language. I find a partial report of the opinion in "The Railway Age" of March 29, 1885, and copy the head notes from there:

"Where a railway company is authorized by statute to construct ane or more branches, the necessity for such branches, and their direction, rest in the will and discretion of the president and directors of the corporation by which they are to be constructed. In the exercise of such authority the company must be regarded as the *locum tenens* of the State, and may do just what the commonwealth could do under like circumstances, that is, when necessary for the proper execution of such power, it may occupy the public highways."

See, also, *Harvey* vs. *Thomas*, 10 Watts., 63;
Sherman vs. *Buick*, 32 Cal., 241;
Brewer vs. *Bowman*, 9 Ga., 37;
Robinson vs. *Swope*, 12 Bush., 21;
Cleveland & P. R. R. vs. *Speer*, 56 Pa. St., 332;
Pittsburg vs. *Pa. R. R. Co.*, 48 Pa. St., 359;
Prather vs. *Jeffersonville R. R. Co.*, 52 Ind., 16.

It is well established by authority that a railroad company having a statutory right to construct a line of railroad from one specified point to another, without directions concerning the particular route to be pursued, possesses by necessary implication the power to select the line of loca-

tion, and if a villiage or city shall lie in the way, the company has the implied right to lay its tracks upon the public streets. This case falls within that rule. It may be said that we have here two terminal points fixed for this proposed side-track, one of them, the starting point is the completed line of railroad on Maryland avenue, and the other is square 233. Congress having reposed the power of selecting the site for the warehouse in the officers of the company, and they having chosen this square, it is just as firmly established as a terminus of the side track as if the act itself had in terms fixed the location. This being true, the right to lay the connecting side-track follows from necessity.

U. P. R. R. vs. *Hall*, 91 U. S., 346;
Duncan vs. *R. R. Co.*, 94 Pa. St., 435;
Tenn. R. R. vs. *Adams*, 3 Head., 597;
Speer vs. *R. R.*, 56 Pa. St., 325;
People vs. *Brooklyn R. R.*, N. Y 389 N. Y., 75;
Rorer on R. R., 489;
R. R. Co. vs. *R. R. Co.*, 23 N. J., Eq., 157;
Hughes vs. *R. R. Co.*, 18 Fed. R., 106;
R. R. Co. vs. *Gas Light Co.*, 63 N. Y., 326;
Chi. & W. R. R. Co. vs. *Dunbar*, 100 Ill., 110;
Houston and Texas R. R. vs. *Odum*, 2 Am. and Eng. R. R. cases, 503, (53 Texas);
Rio Grande R. R. Co. vs. *Brownsville*, 45 Texas, 88; 10 John., 388; 52 Ga., 245.

The Supreme Court of Tennessee in *R. R. Co.* vs. *Adams*, says:

> "The power to come within the city of Nashville carries with it, by implication, the power if need be, to locate the road upon a street or alley: for instance, if a company be authorized to make a railroad, by a straight line between two designated points, this im-

> plies the right to run upon, along, or across all the streets or roads which lie in the course of such line. So the power to enter the city, of necessity, gives the right to locate the road somewhere, and, if need be, upon a street or alley."

The Supreme Court of Massachusetts in *Fall River Company* vs. *Old Colony R. R.*, (5 Allen, 221), also put a very liberal construction upon a statute, and held, (as the syllabus of the case shows:)

> "Under a charter which fixes one terminus of a railroad at or near a certain point, a large discretion is conferred upon the railroad company in locating their road, the exercise of which will not be revised by this court unless they have clearly exceeded its just limit or acted in bad faith; and where a charter authorizes a railroad company to extend, locate, construct, and maintain a railroad from a point at or near the present terminus of its track in Fall River, in a southerly direction, to the line of the State of Rhode Island,' a location starting at a point 2,475 feet, by the line of the railroad, northerly from the termination of the old track is authorized."

It is not going too far to assert that there is an unbroken, uninterrupted line of decisions beginning long before railroad improvements were known, and extending down to the most recent decisions, sanctioning the doctrine contended for in behalf of the appellee in this case.

And it is confidently submitted to this Court that no other rule would be consistent with reason or the views of ordinary business men. When Congress authorizes a railroad company to construct its road to and into the city of Washington, it must be held that such authority was given for the purpose of enabling and requiring the company to transact its business of transporting persons and property in the city; to do this properly and successfully, stations, warehouses and yards for cars and locomotive engines are necessary; their

buildings cannot be built upon the public streets in this city, and they cannot be reached when built on adjoining property without side-tracks, and these side-tracks cannot be constructed without crossing streets. To hold the contrary would, I submit to the Court, practically nullify the statutes and prevent the railroad company from performing the public services for which it was created.

The act of Congress of June 21, 1870, authorizing the company to extend its railroad along Maryland avenue and on and over Long Bridge, requires the company to repair the old bridge then existing, and to "erect and maintain the draw-bridges so as not to impair the free navigation of the Potomac river, and in efficient working condition at all times." It also required the company, in order to accommodate travel and traffic until the needful changes in the bridge should be made, to repair all damages to the (then) present bridge, and to maintain it." These improvements necessarily cost large sums of money. The act also requires the company to accord to other railroad companies the right to pass over the bridge. The company having complied with these requirements, at much expense, stands in the attitude of a purchaser for an adequate consideration, and is entitled at least to a liberal construction of the statute, and to an unembarrassed use of its priviliges.

Southern R. R. Co. vs. *Screven*, 45 Ga., 613;
Turnpike Co. vs. *State*, 94 U. S., 63.

Every additional road which crosses over this bridge increases the necessity for additional depots, sidings, &c., &c. There are now several roads, the business of which, passes over this bridge and requires increased and increasing accommodations.

It is submitted, therefore, that the decree appealed from should be affirmed with costs.

ENOCH TOTTEN,
Counsel for Appellee.